No. 13130

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, *Appellant*

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., AND H. M. LORBER, *Appellees*

On Appeal from the United States District Court for the Northern District of California, Southern Division

---

APPELLANT'S REPLY BRIEF

HOLMES BALDRIDGE
Assistant Attorney General

PHILIP H. ANGELL
Special Assistant to the Attorney General

EDWARD H. HICKEY
DONALD B. MACGUINEAS
Attorneys, Department of Justice
Attorneys for Appellant

March, 1952

INDEX

CITATIONS

CASES:

Page

Page

Page

In the United States Court of Appeals for the Ninth Circuit

No. 13130

UNITED STATES OF AMERICA, *Appellant*

v.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE ROBERT DOLLAR CO., AND H. M. LORBER, *Appellees*

On Appeal from the United States District Court for the Northern District of California, Southern Division

APPELLANT'S REPLY BRIEF

PRELIMINARY STATEMENT

In support of their motion before Judge Murphy to dismiss the Government's quiet title complaint, the Dollars urged that the Government did not acquire outright title to the stock because, they said, the Maritime Commission had no statutory authority to acquire such outright title. Since Judge Murphy in his opinion and order dismissing the complaint (R. 282) made no mention of this contention by the Dollars, we did not discuss it in our opening brief.

The Dollars have, however, renewed this contention in this Court (Appellees' Brief, pp. 96-122), so we here demonstrate that it is without merit and briefly answer appellees' other contentions.

ARGUMENT

I.

The Dollars Are Precluded from Asserting That the Maritime Commission Lacked Statutory Authority to Acquire Outright Title to the Stock.

The Dollars, in arguing that the Maritime Commission lacked authority to acquire title to the stock, are in effect saying that they are entitled to have the stock (valueless when they transferred it, but now worth millions of dollars) back, without paying a penny for it, *even though they fully intended to transfer absolute title to the Commission when they turned it over in 1938.*

The Adjustment Agreement of August 15, 1938, under which the Dollars transferred to the Maritime Commission their common stock in the operating line, has long since been carried out in full. The Dollars have received and enjoyed the full benefits afforded them by that agreement, particularly the release of R. Stanley Dollar and Dollar Steamship Line from their liabilities as sureties on the $7,500,000 debt of the operating line (now American President Lines) to the Government. Also, thanks to the additional Government investment of $4,500,000 in the line, a subsidy contract which has given the line over $20,000,000 in Government grants, and the efficient management of the line installed by the Government, American President Lines has prospered. This has given substantial value to the Dollars' preferred stock in the line (which they did not transfer to the Maritime Commission under the Adjustment Agreement), whereas that preferred stock

was practically valueless when the Dollars turned over the common stock to the Commission in 1938.[1]

The Dollars, having enjoyed these fruits of their bargain, now wish to retain them and at the same time get back from the Government the consideration which they gave (the common stock transferred to the Commission), on the ground that the Commission had not been delegated authority to acquire outright title. Elementary concepts of fairness and equity require that the Dollars be precluded from asserting any such contention.

There can be no question that the United States as such has the capacity and power to acquire ownership of corporate stock. If we assume for the moment that the Dollars are correct in their contention that the

---

[1] As to the carrying out of the Adjustment Agreement, see *Land* v. *Dollar,* 330 U. S. 731, 733-4; *Dollar* v. *Land,* 82 F. Supp. 919, 920-1 (D. Col.); *Dollar* v. *Land,* 184 F. 2d 245, 250 (C. A. D. C.). As to the line's receipts from the Government subsidy and its present prosperity, see the 1950 Annual Report of American President Lines (Exhibit C to the affidavit of Donald B. MacGuineas in support of the Government's motion for preliminary injunction, in the orginal record on this appeal) and *Dollar* v. *Land,* 82 F. Supp. 919, 922 (D. Col.).

As to the Dollars' continued ownership of preferred stock in the line and the lack of value of that stock in 1938 because of the line's grave financial position, see *Dollar* v. *Land,* 82 F. Supp. 919, 921-2, 926 (D. Col.), stating: "[the line's] position was desperate and bordering on the completely disastrous * * * the line was at the end of its resources and there is a serious question as to whether or not the stock had any value at the time." See also *Dollar* v. *Land,* 184 F. 2d 245, 250-1 (C. A. D. C.), stating: "the financial position of Dollar of Delaware was precarious * * * the stock, at the time of the Adjustment Plan, had little or no market value." Although these comments were directed specifically to the common stock, it is obvious the preferred stock could have no substantial value either, with the line in such desperate financial condition. And see *Land* v. *Dollar,* 330 U. S. 731, 733.

United States had not delegated to its agent, the Maritime Commission, the authority to acquire the stock on its behalf, that is a matter which concerns only the agent (the Commission) and the principal (the United States).

Limitations on the authority of a Government agency are for the benefit of the Government, not for the benefit of those, such as the Dollars here, who voluntarily contract with the agency. They have no standing to set up lack of authority to enable them to avoid their own contract. *American Refining and Smelting Company* v. *United States,* 259 U.S. 75, 78. "While it is established that a contract not complying with the statute cannot be enforced against the Government, it never has been decided that such a contract cannot be enforced against the other party." *United States* v. *New York and Porto Rico Steamship Company,* 239 U.S. 88, 92. A statutory limitation upon the contractual authority of a Government agency "creates a duty owing to the Government and no one else * * * it is a self-imposed restraint for violation of which the Government—but not private litigants—can complain." *Perkins* v. *Lukens Steel Co.,* 310 U.S. 113, 126, 127.

If the Adjustment Agreement, providing as it did for the outright transfer of the stock to the Commission, was "illegal"; i.e., not within the Commission's statutory authority, nevertheless, that agreement has been executed in full. The Dollars were as much a party to such "illegality" as was the Maritime Commission. They may not now rescind the contract on the ground that it was unauthorized. *Harriman* v. *Northern Securities Company,* 197 U.S. 244, 295-6; *Second Russian Insurance Company* v. *Miller,* 268 U.S. 552, 562; *Dent* v. *Ferguson,* 132 U.S. 50, 64-5; *Northwestern Oil Co.* v. *Socony-Vacuum Oil Co.,* 138 F. 2d 967, 971 (C.C.A. 7).

The Dollars assert in effect that the agreement to transfer the stock outright to the Commission was *ultra vires* as to it. If so, their acceptance of the benefits of the agreement precludes them from asserting *ultra vires* now. *St. Louis, etc., Railroad* v. *Terre Haute and Indianapolis Railroad Company,* 145 U.S. 393, 406-8; *Smith* v. *Sheeley,* 79 U.S. 348, 361; *Cush* v. *Allen,* 13 F. 2d 299, 301 (App. D.C.).[2]

The question as to whether the Dollars may now be heard to assert the Commission's lack of authority to acquire title to the stock has not been passed on in any of the decisions in the *Dollar* v. *Land* litigation. When that case was before the Supreme Court on the jurisdictional issue as to whether that suit was in effect an unconsented suit against the United States (*Land* v. *Dollar,* 330 U.S. 731), the Supreme Court had no occasion to, and did not pass on the validity of any defenses which might be raised, such as the one here argued that even if the Commission did lack statutory authority to acquire title to the stock, the Dollars are not in a position to raise that issue now. The Court said: "We intimate no opinion on the merits of the controversy. We only hold that the District Court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits." (330 U.S. at 739.)

---

[2] Cases such as *Marsh* v. *Fulton County,* 77 U. S. 676; and *Citizens' National Bank* v. *Appleton,* 216 U. S. 196, holding that a corporation which refuses to perform its promise under an *ultra vires* contract may be required to refund the consideration which it has received under the contract, have no application here. The Maritime Commission completely performed all its obligations under the Adjustment Agreement, and the Dollars and all other parties to the agreement received in full the benefits accruing to them under it.

II.

The Maritime Commission Was Authorized to Acquire Absolute Title to the Stock.

The Maritime Commission acquired the stock under Section 207 of the Merchant Marine Act of 1936 (49 Stat. 1988, as amended by 52 Stat. 954, 46 U.S.C. 1117) and as statutory successor to the powers of the former United States Shipping Board (46 U.S.C. 1114).

Section 207 of the Merchant Marine Act of 1936 provides:

> The Commission may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its discretion, be necessary to carry on the activities authorized by this chapter, or to protect, preserve, or improve the collateral held by the Commission to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. * * * [3]

Under this broad statutory authority the power of the Maritime Commission to acquire the stock is sustainable on each of four different bases: (1) as an exercise of its power to "protect, preserve, or improve

---

[3] The balance of this section reads:

> "* * * All the Commission's financial transactions shall be audited in the General Accounting Office accordingto approved commercial practice as provided in the Act of March 20, 1922, ch. 104, 42 Stat. 444; *Provided,* That it shall be recognized that because of the business activities authorized by this chapter, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Commission from the provisions of this chapter."

the collateral held by the Commission to secure indebtedness"; (2) as an exercise of the power of the former Shipping Board to settle or compromise claims; (3) as an exercise of the Commission's general power to compromise claims, implicit in its authority to carry on its statutory functions by entering into contracts just as a "private corporation" may do; and (4) as an exercise of the implied power of Government agencies generally to enter into contracts reasonably incident to the performance of their functions.

1. Acquisition of the Stock Was Authorized as an Exercise of the Commission's Power to Protect, Preserve, or Improve Collateral Held by It.

At the time the Dollars transferred the stock to the Commission in 1938 the operating line was indebted to the Government in the amount of $7,500,000 (exclusive of the new loans made by the Government under the agreement). R. Stanley Dollar was liable to the Government as a surety on this debt to the extent of $1,750,000 and Dollar Steamship Line was similarly liable as surety to the extent of $3,500,000. As security for this debt, the Government held mortgages on the vessels of the operating line.[4]

Proper management of the operating line and maintenance of its vessels was, of course, one of the most important factors in securing the payment of the debt to the Government and protection of the collateral—the mortgages on the vessels. When a commercial lender, such as a bank or an insurance company, which has money invested in an enterprise puts in a large amount of new money to save it from bankruptcy, it is, of course, not unusual for the lender to acquire the controlling stock of that enterprise as consideration

[4] As to these facts, see *Dollar* v. *Land*, 184 F. 2d 245, 250 (C. A. D. C.).

for putting in new money and to insure trustworthy and efficient management. See *French* v. *Shoemaker,* 14 Wall. 314; *Handley* v. *Stutz,* 139 U.S. 417; *Commissioner of Internal Revenue* v. *Wright,* 47 F. 2d 871 (C.A. 7), remanding 19 B.T.A. 471; *Rosenberg* v. *Garfinkel,* 294 Mass. 196, 199-200, 200 N.E. 907, 909; *Colonial Trust Co.* v. *Hoffstot,* 219 Pa. 497, 69 A. 52.

Indeed, since the Dollars were unable or unwilling to put in new money in the reorganization of the operating line and their common stock then had no appreciable equity, fair and equitable treatment of the other financial interests involved required the elimination of the Dollars as common stockholders in the reorganized line. And by the same test it was proper for the Government to become the controlling stockholder in the line, since it was the only party putting in the new money necessary to keep the line out of bankruptcy. *Case* v. *Los Angeles Lumber Co.,* 308 U.S. 106, 112, 120-2, 126; *Consolidated Rock Products Co.* v. *Du Bois,* 312 U.S. 510, 520-1; *Ecker* v. *Western Pacific R. Corp.,* 318 U.S. 448, 452, 462, 475-6, 485-7; *Mason* v. *Paradise Irrigation District,* 326 U.S. 536, 541-3; *Reconstruction Finance Corporation* v. *Denver & Rio Grande Western R.R. Co.,* 328 U.S. 495, 509, 516-7. The *Mason* and *Ecker* cases, *supra,* expressly hold that a Government lending agency (such as the Maritime Commission was in this case) is entitled to a preferential corporate position where it puts new Government money into the enterprise.[5]

So here the Commission, having discretionary authority to enter into contracts like a private corpora-

[5] The cases just cited involved judicial corporation reorganizations. But financial arrangements which the Supreme Court imposes as "fair and equitable" in such situations cannot be any the less so when provided for in a voluntary reorganization, which is essentially what the Adjustment Agreement of 1938 was.

tion to protect and improve the collateral for the Government loans, was entitled to acquire the controlling stock interest and eliminate the Dollar management. As stated in *Dollar* v. *Land,* 82 F. Supp. 919, 926 (D. Col.):

> * * * apparently it was felt that the only hope of solution and the only circumstances under which an operating subsidy could then be granted and further public money poured into a sinking enterprise in an effort to salvage it, was by its complete divorcement from both the personal and corporate plaintiffs [the Dollars].

That was a particularly appropriate course for the Commission to take since it considered that: "The past history of the Dollar operations made it obviously clear that the management was shockingly incompetent * * * the failure of management has been the principal factor reducing the company to its present regrettable condition * * * every conceivable device was adopted [by the Dollar management] to drain the earnings and working capital from the company as rapidly as possible" (R. 331, 333-4).[6]

---

[6] If it be argued that the Commission could have obtained management control by a pledge of the stock with voting rights rather than by acquisition of outright title, there are two answers. (1) Since the statute authorized the Commission to enter into such contracts "as may, in its discretion, be necessary" to protect the collateral, the choice of methods rested with the Commission. (2) A pledge of the stock with voting rights would not have effectuated the Commission's policy that it "did not consider it appropriate in extending financial aid to maintain an essential foreign trade route, to create common stock equity values in favor of persons who were unwilling themselves to assume any financial obligations whatever" (Report of the Maritime Commission to Congress, dated April 10, 1939, entitled "Reorganization of American President Lines, Ltd", p. 61).

The trial court in *Dollar* v. *Land* specifically held that acquisition of outright title to the stock was authorized under the Commission's power to protect and preserve the collateral for the debt to the Government. *Dollar* v. *Land,* 82 F. Supp. 919, 922 (D. Col.). The reversal of the trial court by the District of Columbia Court of Appeals does not affect the former's conclusion on this issue, since the Court of Appeals reversed solely on its factual conclusion that the Dollars had pledged the stock and specifically stated that it was not passing on the legal issue of the Commission's authority to acquire outright title. *Dollar* v. *Land,* 184 F. 2d 245, 249-50 (C.A. D.C.). See pages 18-9, below.

2. Acquisition of the Stock Was Authorized as an Exercise of the Power Formerly Vested in the Shipping Board to Settle or Compromise Claims.

By 46 U.S.C. 1114 "All the functions, powers, and duties vested in the former United States Shipping Board * * * " were transferred to the Maritime Commission. Among the powers of the former Shipping Board so transferred were the settlement powers which the Shipping Board exercised through the medium of the United States Shipping Board Emergency Fleet Corporation, organized by it as a District of Columbia corporation to carry out certain of the Shipping Board's functions. See the Act of September 7, 1916, 39 Stat. 728, 731; *United States ex rel. Skinner & Eddy Corp.* v. *McCarl,* 275 U.S. 1, 5; McDiarmid, *Government Corporations and Federal Funds,* p. 25.

The former Shipping Board and the Emergency Fleet Corporation (in contrast to the Government departments generally) were authorized to settle and adjust claims by and against them. As stated in the *Skinner & Eddy Corp.* case, *supra* (pp. 7-8, 11-12):

At no time, during the War, or since its close, have the financial transactions of the Fleet Corporation passed through the hands of the general accounting officers of the Government or been passed upon, as accounts of the United States, either by the Comptroller of the Treasury or the Comptroller General. The accounts of the Fleet Corporation, like those of each of the other corporations named, and like those of the Director General of Railroads during Federal Control, have been audited, and *the control over their financial transactions has been exercised, in accordance with commercial practice, by the board or the officer charged with the responsibilities of administration. Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States.* * * *

* * * * * * * * *

* * * the Fleet Corporation is an entity distinct from the United States and from any of its departments or boards; and the audit and *control of its financial transactions is, under the general rules of law and the administrative practice, committed to its own corporate officers except so far as control may be exerted by the Shipping Board.* * * *

There is nothing in the language of the statutes, or in reason, to support the suggestion that the Shipping Board has the power to adjust claims, but that the adjustment does not become operative unless there is approval of the final settlement by the Comptroller General. Nor is there any basis

> for the further suggestion of Skinner & Eddy that the Shipping Board has power to make settlement, if it can; but where a settlement is not made and a suit by the United States is brought or threatened, the Comptroller General is the official to whom must be presented all claims for credit in such suit. * * *. [Italics supplied.]

This authority of the Maritime Commission, as successor to the powers of the Shipping Board, to settle claims is also clearly shown by contemporaneous legislative history. Thus the Senate Committee on Commerce, in reporting a 1938 amendment to Section 207 of the Merchant Marine Act of 1936, stated:

> The committee has given consideration to the necessity for further changes in this section concerning the authority of the Comptroller General to disallow in the accounts of the Maritime Commission payments deemed to be authorized by the Maritime Commission under this act, to prescribe the system of accounts to be kept by the Maritime Commission, and to require that *all claims arising out of its activities be settled and adjusted in the General Accounting Office.* But from a review of the legislative history of this section, as well as a reading of its simple language, this committee is convinced that no further changes are necessary. *The authority conferred upon the Comptroller General by this section is obviously the same as that which he had over the affairs of the former Merchant Fleet Corporation.* It provides for the audit of the accounts of the Commission and a report to the Congress of any departure from the provisions of the act, but does not authorize the Comptroller General to make disallowances in the accounts of the disbursing officer in connection

with disbursements for the Commission. This conclusion is substantiated by the direction in said section to have the General Accounting Office audit the Maritime Commission's accounts according to approved commercial practice as provided in the act of March 20, 1922 (42 Stat. 444). *This gives to the Maritime Commission a freedom of action absolutely necessary because of the commercial nature of its functions* and at the same time provides ample safeguards of the Commission's expenditures. (S. Rep. 1618, 75th Cong., 3rd sess., p. 5.) [Italics supplied.]

The report of the House Committee on Merchant Marine and Fisheries is to the same effect. H. Rep. No. 2168, 75th Cong., 3rd sess., in reporting on the same amendment to Section 207, stated (pp. 17-8):

> The amendment is designed to make clear a power which it is thought already exists in the Commission but about which some doubt has been expressed. *Under the act, the Maritime Commission has all the general and implied powers of a business corporation.* * * *
>
> The remainder of the section is unchanged. But, during the committee's consideration of this section, it was developed that some question had arisen as to whether the Comptroller General was authorized, under the general powers granted to him, to prescribe the system of accounts to be kept by the Maritime Commission and *to require that all claims arising out of its activities be settled and adjusted in the General Accounting Office.* Section 207 provides that the Commission's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the act of March 20, 1922

(42 Stat. 444). *That act, as construed by the Comptroller General, did not require that all claims arising out of the activities of the Emergency Fleet Corporation be settled and adjusted in the General Accounting Office.* The direction contained in section 207 of audit "according to approved commercial practice as provided in the act of March 20, 1922," has reference to "the usual methods of steamship or corporation accounting" specified by that act. Therefore, the legislative history of section 207, and the context as well, justify the conclusion that Congress, by the enactment of the section with the specific reference to the act of March 20, 1922, intended to make the earlier statute applicable, *at the same time adopting the administrative interpretation which had theretofore been given it by both the Comptroller General and the Emergency Fleet Corporation.* Under the circumstances, therefore, no further clarification of section 207 is required. [Italics supplied.]

Prior to the execution of the Adjustment Agreement under which the stock was transferred by the Dollars, the Government held claims against R. Stanley Dollar personally and Dollar Steamship Line as sureties on the debt of the operating company, in the respective amounts of $1,750,000 and $3,500,000. Under the Adjustment Agreement, the Commission accepted title to the stock in compromise and satisfaction of these claims against R. Stanley Dollar and Dollar Steamship Line. The circumstances were appropriate for compromising these Government claims, since although the common stock then had no appreciable value, the Commission may well have concluded that it was at least doubtful whether the suretyship obligations of R. Stanley Dollar and Dollar Steamship Line would have been collectible

if sued on. Furthermore, as we have shown above, acquisition of the stock gave the Government the additional advantages of eliminating the Dollar management and effectuating the Commission's policy of not permitting Government funds to be put at risk to create common stock equities in persons such as the Dollars, who were unwilling to risk their own money to keep the operating company out of bankruptcy.

3. Since the Maritime Commission Had the Authority to Make Contracts in the Same Manner as a Private Corporation, in Furtherance of Its Statutory Functions, It Had Implied Power to Acquire the Stock in Compromise of Claims Against the Dollars.

The Maritime Commission was given authority to contract "in the same manner that a private corporation may contract within the scope of the authority conferred by its charter", so that the Commission (like its predecessor, the Shipping Board) could operate like a private corporation free from the restrictions imposed by law upon Government agencies generally. In the words of the House Committee on Merchant Marine and Fisheries, the Maritime Commission was given, by Section 207 of the Merchant Marine Act of 1936 "all the general and implied powers of a business corporation." H. Rep. No. 2168, 75th Cong., 3rd sess., p. 17 (quoted at p. 13, above).

In *United States* v. *Standard Oil Co.,* 156 F. 2d 312 (C.A. 9), this Court affirmed a decision taking that broad view of the implied powers of the Maritime Commission. *Standard Oil Co. of California* v. *United States,* 59 F. Supp. 100, 106 (S.D. Cal.). In that case the District Court held that the War Shipping Administration[7] had the implied power to create by char-

[7] During World War II the War Shipping Administration was given by executive order some of the functions of the Maritime Commission. Executive Order 9054 (7 F. R. 837); Executive Order 9244 (7 F. R. 7327).

ter party a liability of the United States to pay attorneys' fees. This position that the Maritime Commission had the implied powers of a private corporation was also taken in 40 Op. A.G. 267.

There is no doubt that a private corporation has implied power to settle or compromise claims which it holds. 6 Fletcher, *Cyclopedia Corporations* (1931 ed.), § 2511, pp. 234-5; *Northern Liberty Market Company* v. *Kelly,* 113 U.S. 199, 202; *Greene County Nat. Farm Loan Ass'n.* v. *Federal Land Bank of Louisville,* 57 F. Supp. 783 (W.D. Ky.), affirmed 152 F. 2d 215 (C.A. 6).

Hence, the Maritime Commission, having the contracting power of a private corporation, likewise had authority to compromise debts owed it.[8] This was specifically held by the trial court in the *Dollar* v. *Land*

---

[8] For analogous instances in which a Government agency having, like the Maritime Commission, broad corporate powers has accepted securities in discharge of a debt to the Government, see the Comptroller General's audit report of the Reconstruction Finance Corporation for the fiscal year ending June 30, 1950 (House Doc. 125, 82d Cong., 1st sess., p. 40):

"Securities acquired in liquidation of loan indebtedness consisted of:

Securities accepted in railroad reorganizations (including accrued interest of $571,748	$16,962,482
Securities accepted in payment of interest and dividends on loan indebtedness, except railroad reorganizations (including accrued interest of $13,376)	495,534
Other securities	1,622,322
Total	$19,080,338

Securities accepted in railroad reorganizations represent obligations of railroads reorganized under the national bankruptcy act, received by RFC in exchange for original loans and securities held prior to the reorganizations. * * *."

litigation. *Dollar* v. *Land,* 82 F. Supp. 919, 922-3 (D. Col.):

> It [the Maritime Commission] was created, from a functional point of view, for the purpose of permitting the conduct of its business in a manner similar to that of private enterprise and free as a consequence of the ordinary inhibitions applied to the regular executive branches of the Government.
>
> Its powers in this respect are similar to that of a business corporation.
>
> * * * if the Commission has the powers of a private business corporation then it has what such an entity certainly impliedly has—the power to compromise claims—even if as in this instance those are claims of the United States. * * *

Similarly, when *Dollar* v. *Land* first went to the District of Columbia Court of Appeals on the jurisdictional issue as to whether it was an unconsented suit against the United States, that court also construed Section 207 of the Merchant Marine Act of 1936 as granting the Maritime Commission the broad contractual powers of a private corporation. It said (*Dollar* v. *Land,* 154 F. 2d 307, 311):

> We are in agreement with the view taken of this section of the law by the court deciding Standard Oil Co. of California v. United States, 59 F. Supp. 100, involving the Maritime Commission. There the provision was treated in the same fashion as those statutes creating corporate instrumentalities for the conduct of public business. While the corporate acts characteristically carry language to the effect that the corporation may "sue and be sued," we think the comparison is well drawn. It is in harmony with the views of administrative

officials having occasion to consider that section of the law involved in this litigation. For example, though not deciding the extent of contractual freedom conferred upon the Maritime Commission by Section 207 the Attorney General has stated "that section 207 was intended to confer 'all the general and implied powers of a business corporation' (H. Rept. No. 2168, 75th Cong., 3d Sess.) and that it has been construed to authorize departures from the usual rules governing the making of Government contracts when the unusual or business character of the activities involved so require (Comptroller General's Decisions, A-51647, March 27, 1941, and B-15611, January 12, 1942)."

Thus the Maritime Commission seems to stand in much the same relationship to those with whom it contracts under section 207 as do the more formal corporate organizations charged with transacting the government's business. * * *

When *Dollar* v. *Land* went to the District of Columbia Court of Appeals the second time on the Dollars' appeal from the trial court's conclusion that they had transferred the stock outright, that Court of Appeals did not pass on the legal issue as to whether the Commission had authority to acquire outright title to the stock as incident to its power to compromise or settle claims; it reversed the trial court solely because of its conclusion that the Dollars had pledged the stock. *Dollar* v. *Land,* 184 F. 2d 245, 249-50:

> But the Commission does not say that it has a general power to acquire stock by purchase, apart from its other duties in respect to maritime operations. It says that its power to acquire stock is incident to its power to compromise or settle claims. It can, it says, accept stock in the settlement or compromise of a claim.

> The proposition thus presented by the Commission has strong basis. Since the Commission has statutory power to make loans and to manage them, an implied power to accept satisfaction of, or upon proper grounds to settle, the claims thus created seems reasonable and in accord with the usual rules of law. At the same time there is a strong contrary view, based upon decided cases, official opinions, and statutes as to the power to compromise claims for and against the United States. *But we do not decide that question because we do not reach it.* We must first decide whether the acquisition of this stock was part of the compromise or settlement of a claim. [Italics supplied.]

However, when *Land* v. *Dollar* went to the District of Columbia Court of Appeals for the third time, to review the judgment of the District Court on mandate quieting title to the stock in the Dollars, the Court of Appeals, in flat contradiction of what it had stated in its own previous opinion (just quoted), said (*Land* v. *Dollar,* 188 F. 2d 629, 631):

> The case was returned to the District Court, was tried, 82 F. Supp. 919, and was appealed to this court, and it was here held that (1) the Commission had no power to acquire outright ownership of the stock and (2) the plaintiffs were pledgors.

How the Court of Appeals could have so misread its own prior opinion is an incomprehensible to us as it was to the Dollars.[9]

---

[9] In our petition for certiorari to review this latter judgment of the Court of Appeals, we stated: "When this case was before this court on our previous petition for certiorari (No. 353, this Term), the Court of Appeals had explicitly held that it did not decide

In its opinion on the issuance of the contempt citation the Court of Appeals this time correctly described its earlier holding as merely ruling on the pledge issue: "We held that the 1938 transaction was a pledge and directed the District Court to order the return of the shares." *Land* v. *Dollar,* 190 F. 2d 366, 368, 371 (C.A. D.C.). And finally in its opinion holding Government officials in contempt, the Court of Appeals again correctly described its earlier decision as merely holding that "the transaction of 1938 was a pledge of the shares and not a sale". *Sawyer* v. *Dollar,* 190 F. 2d 623, 627 (C.A. D.C.).

---

whether Section 207 of the Merchant Marine Act of 1936 * * * authorized the Maritime Commission to acquire title to the stock * * * Now the court of appeals contradicts its own former opinion and states, 'it was here held that (1) the Commission had no power to acquire outright ownership of the stock * * *.' We suggest that if an administrative agency is to be held to have been in error in construing its basic statute over a 15 year period, it should at least have a decision on that issue rather than a mistaken and enigmatic reading of a prior decision" (Pet. for Cert., p. 18, *Land* v. *Dollar*, No. 552, October Term, 1950).

In their opposition the Dollars agreed that the Court of Appeals had not passed on the issue of statutory authority. They said: "Petitioners * * * assert that the court below held that Section 207 of the Merchant Marine Act does not authorize the government to acquire outright title to stock in an operating steamship corporation. There is no such holding; no such question is involved. * * * In its decision of July 1950 the court below found that the contract was a pledge. Consequently it said 'we do not decide that question [of the Commission's power to acquire outright title], because we do not reach it' (R. 2147). The present petition (No. 552) not only quotes this clear statement but correctly says 'When this case was before this Court on our previous petition for certiorari (No. 353, this term), the Court of Appeals had explicitly held that it did not decide whether Section 207 of the Merchant Marine Act of 1936 * * * authorized the Maritime Commission to acquire title to the stock.' "

(Brief in Op., p. 20, *Land* v. *Dollar,* No. 552, October Term, 1950.)

Accordingly, the only real holding by any court in the *Dollar* v. *Land* litigation on the issue of the Commission's authority to acquire title to the stock is the holding of the trial court that the Commission did have such authority (see p. 17, above).

4. The Acquisition of Title to the Stock Was Authorized as Reasonably Incident to the Commission's Functions as a Government Agency.

Even if the Maritime Commission had not been authorized to enter into contracts with "all the general and implied powers of a business corporation," its acquisition of the stock would be authorized under the general principle that a Government agency has implied powers reasonably incident to the performance of its statutory functions.

The United States as an incident to its general right of sovereignty may enter into contracts "not prohibited by law and appropriate to the just exercise of * * * the constitutional powers confided to it," even though such a contract is not prescribed by any law; and it is not essential that the Government officer who enters into such a contract have been given express statutory authority to do so, as long as it is a reasonable incident to the duties of his office. *United States* v. *Tingey,* 5 Pet. 115, 128; *United States* v. *Bradley,* 10 Pet. 343, 359-60; *United States* v. *Linn,* 15 Pet. 290, 298; *Neilson* v. *Lagow,* 12 How. 98, 107.

In accordance with this principle, a Government official responsible for collection of a claim of the United States is authorized to compromise the debt and accept property in satisfaction thereof. It is not necessary that he be specifically authorized by law to do so. In fact, that power has been exercised "since the foundation of the government." *United States* v. *Hudson,* 26 Fed. Cas. 411, 412 (C.C.D. Ind.); *United States* v. *Lane,*

26 Fed. Cas. 861, 862 (C.C.D. Ind.). "The denial of the power to accept properties other than moneys in settlement and compromise would seriously interfere with the exercise of the power of compromise and settlement." 37 Op. A.G. 298, 300.

Thus, for example, the unquestioned authority of the Attorney General to compromise claims which are in litigation is not specifically granted by statute. On the contrary, it is implied from his statutory authority to control and conduct litigation involving the United States (5 U.S.C. 309, 310, 316, 317), and has been exercised by him virtually since the founding of this republic. 2 Op. A.G. 482, 486; 22 Op. A.G. 491, 494; 23 Op. A.G. 507. See 38 Op. A.G. 98; *New York* v. *New Jersey,* 256 U.S. 296, 308.[10]

Government officials and agencies have *implied* powers necessary and appropriate to the administration of their statutory functions and the courts, in considering whether an act by an agency is within its authority, must give due regard to its implied as well as its express powers. *Peoples Bank* v. *Eccles,* 161 F. 2d 636, 640 (C.A. D.C.).[11] Obviously, as stated in *Texas & Pacific Railway Co.* v. *Pottorff,* 291 U.S. 245, 253, "The measure of their powers is the statutory grant; powers not conferred by Congress are denied," but this means powers expressly or *impliedly* granted by Congress, as

---

[10] Although this power of compromise was specifically vested in the Attorney General by Executive Order 6166, June 10, 1933 (5 U. S. C. 124-132), he had it as an implied power independent of and long prior to Executive Order 6166. 38 Op. A. G. 98; 22 Op. A. G. 491.

[11] *Keifer & Keifer* v. *Reconstruction Finance Corporation,* 306 U. S. 381, for example, held that a corporate government instrumentality had *implied* power to sue and be sued and that Congress had *impliedly* waived its immunity from suit.

is evidenced from that case[12] and from *Inland Waterways Corp.* v. *Young,* 309 U.S. 517, holding that national banks have implied powers to pledge assets to secure deposits of government corporations. See also *Royal Indemnity Co.* v. *United States,* 313 U.S. 289, 294, stating that the power of Government officers to dispose of the rights and property of the United States may be either "conferred upon them by Act of Congress or is to be implied from other powers so granted."

The Commission's substantive powers are those granted it by statute, and its implied powers are those reasonably necessary and appropriate for it to administer its substantive powers, just as in the case of any other agency or corporation of the Government. Since, as we have shown *supra,* the Commission, although not a corporation, was intended by Congress to have all the powers of a private corporation, and since the Commission was granted "all the functions, powers, and duties" of the Shipping Board with respect to the ship debts (46 U.S.C. 1112, 1114), it (like the Shipping Board before it and like any private corporation) had the implied power to acquire outright title to the stock in compromise of the liability of R. Stanley Dollar and Dollar of California.

---

[12] In the *Texas & Pacific Railway* case, the Supreme Court did not merely look to the statute to ascertain whether the claimed authority was expressly vested in the national bank involved. Instead, the Court recognized that the bank might have implied, in addition to express, powers; and its refusal in this instance to imply the power to pledge assets to secure private deposits was based on the grounds, among others, (1) that had not been the practice of national banks (291 U. S. at 254), and (2) it would result in unequal treatment of private depositors, and hence be inconsistent with the provisions of the National Bank Act (291 U. S. at 255-256).

5. Appellees' Arguments Against the Commission's Authority to Acquire Title to the Stock Are Unsound

We have answered above many of appellees' arguments on this issue. We here dispose of the other authorities cited in appellees' brief.

The objective of 41 U.S.C. 11 is "to prevent executive officers from involving the Government in *expenditures or liabilities* beyond those contemplated and authorized by the law-making power." 21 Op. A.G. 248. [Italics supplied.] Acquisition of the stock did not involve the Government in expenditures or liabilities. But even where Government officials make commitments of Government funds, the doctrine of implied powers operates. *Burns* v. *United States,* 160 Fed. 631, 634 (C.A. 2); 40 Op. A.G. 69; 37 Op. A.G. 288; 21 Op. A.G. 1; see also *United States* v. *Threlkeld,* 72 F. 2d 464 (C.A. 10).

In *Pan American Petroleum and Transport Company* v. *United States,* 273 U.S. 456; and *Mammoth Oil Company* v. *United States,* 275 U.S. 13, the lease of Government property involved was invalid because it was procured by corruption and fraud and was in direct conflict with the policy of the statute involved. Furthermore, the lease was made by the Secretary of the Navy, not by an agency such as the Maritime Commission which Congress has given the freedom of operation of a private corporation.

In *United States* v. *Tichenor,* 12 Fed. 415, 422 (C.C. D. Ore.), the court said, "It is not claimed that there was any law authorizing any one to purchase this property * * *." Of course, we claim Section 207 of the Merchant Marine Act of 1936 as authorizing acquisition of the stock.

4 Op. A.G. 600; 9 Op. A.G. 18; and 15 Op. A.G. 235 merely hold the obvious that where Congress has appropriated a specific sum for a project, Government offi-

cers are not authorized to spend more than that sum. Interestingly enough, 31 Op. A.G. 597 held that the Secretary of the Interior was authorized to acquire stock of a railroad corporation, although this power had to be *implied* from the statute involved.

Detroit Citizens' Street Ry. Co. v. *Detroit Railway*, 171 U.S. 48, 53, held that a municipal corporation did not have implied authority to grant a perpetual monopoly for the use of its streets. The court expressly pointed out that in such a case authority by implication should be very strictly limited to avoid future paralysis of public functions.

31 U.S.C. 198 merely specifies the types of currency which shall be legal tender in the payment of debts due the United States. It does not deal at all with the power to compromise such debts.

Appellees argue (Brief, pp. 105-6) that the Congress has confined to the Secretary of the Treasury the power to compromise debts due the United States, citing 31 U.S.C. 194. They refute their own argument, however, by conceding that as to claims in litigation the Attorney General, not the Secretary of the Treasury, has the implied power of compromise (Appellees' Brief, p. 107). The fact that the compromise power is not vested exclusively in the Secretary of the Treasury is further manifested by the fact that 31 U.S.C. 194 is in terms no more all-embracing than is the statutory power of the Comptroller General to settle and adjust "all claims and demands whatever by the Government of the United States or against it." 31 U.S.C. 71. Yet the Comptroller General's authority to settle and adjust claims does not extend to the Maritime Commission or its predecessors, the Shipping Board and the Emergency Fleet Corporation (see pp. 10-4, above). For the same reason, the Secretary of the Treasury's compromise power

does not affect the Commission's power of compromise.[13]

Furthermore, there are other implied exceptions to the Secretary of the Treasury's power of compromise under 31 U.S.C. 194. See 34 Op. A.G. 108 holding that authority to compromise liability on a loan made to a railroad under Section 210 of the Transportation Act, 1920 is impliedly vested in the Interstate Commerce Commission; and 38 Op. A.G. 381 holding that authority to compromise liability for an offense under the Harrison Narcotic Act (38 Stat. 725, 26 U.S.C. 2550) committed in Puerto Rico is impliedly vested in the Government of Puerto Rico.

Pointing to three instances in which Congress in the original Merchant Marine Act and in amendments has made express provision for Commission authority to compromise certain types of claims, the Dollars argue (Brief, pp. 107-9) that under the maxim, *expressio unius est exclusio alterius,* no general authority in the Commission to settle debts owed to it should be implied from Section 207. Apart from the fact that this maxim can have no application to the implied powers of a Government agency or corporation,[14] examination of these provisions reveals that they fall into two categories, neither of which precludes such implication of the power.

---

[13] Since the claim here involved is not one arising under the tax laws, it is immaterial whether the method prescribed in 26 U.S.C. 3761(a) for compromising such claims is exclusive. Hence *Botany Worsted Mills* v. *United States,* 278 U.S. 282; and *George S. Colton etc. Co.* v. *White,* 16 F. Supp. 726 (D. Mass.) have no application here.

[14] By definition, an implied power is never "expressio." To apply that maxim to implied powers would necessarily eradicate the whole doctrine of implied powers.

The first category, which includes 46 U.S.C. 1141, 1142, involves the situation where Congress limited the Commission's authority to settle claims arising out of the cancellation of all ocean mail contracts and prescribed procedures for such settlements, including resort to the Court of Claims. Of course, where Congress decides to impose restrictions and limitations upon the compromise power of the Commission, it is necessary for the conditions and procedures to be spelled out by express statutory provision. Such spelling out, however, has no bearing on the Commission's compromise power in other areas of its activities.

The second category deals with situations where Congress vested the Commission with new and additional functions, i.e., the 1938 amendment adding the new Federal Ship Mortgage Insurance Title and the 1940 amendment adding the "Insurance" function to Title II. The provision in these amendments authorizing the Commission to settle claims arising thereunder is no different in purpose from the 1938 amendment to Section 207, which, as we have shown, supra, was enacted, not because the Commission did not by implication have the authority expressly enacted but rather, to remove by express enactment any possibility of doubt that the Commission had that power with reference to these new duties and functions. As the Senate Committee stated with regard to the amendment to Section 207: "It is believed that such authority already exists in the Commission, but the amendment is recommended in order to remove any doubt that the Commission possesses the power to advance or expend for such purposes when found necessary" (S. Rep. 1618, 75th Cong., 3rd sess., p. 5). The same view is expressed in the House Report (H. Rep. 2168, 75th Cong., 3rd sess., p. 17). By the same token, Congress' express authorization to the Commission to compromise claims arising out of the

performance of these new duties and functions does not indicate that the Commission did not already have the power in regard to its other activities.

No inference as to a lack of implied power in the Maritime Commission to compromise claims may be drawn from the fact that Congress has in certain cases specifically authorized the heads of Government departments and agencies to make such compromises (Appellees' Brief, p. 110). Such department and agency heads, unlike the Maritime Commission, have not been authorized by Congress to act like a private corporation free from the restrictions imposed by law upon Government agencies generally.

In *Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 380; and in *Regional Agricultural Credit Corporation* v. *Stewart,* 69 N.D. 694, 289 N.W. 801, cited in Appellees' Brief (p. 111), the power purported to be exercised by an agent of a government corporation was *expressly* prohibited by regulations. Of course no Government agent can have implied power to do that which is expressly prohibited.

Although 46 U.S.C. 1116, providing that the proceeds of debts transferred to the Commission shall be deposited in the Treasury for a revolving fund, obviously relates only to money proceeds, it by no means follows that that provision of law was intended to limit the Commission to receiving money rather than property in settlement of claims. So to construe it would not only create a conflict with 46 U.S.C. 1114, which gave the Commission "All the functions, powers, and duties" of the Shipping Board with respect to the ship debts, but would "seriously interfere with the exercise of the power of compromise and settlement. 37 Op. A.G. 298, 300.

Similarly, Sections 202 and 206 of the Merchant Marine Act (46 U.S.C. 1112, 1116) do not support the Dol-

lars' contention (Appellees' Brief, p. 112). The fact that Section 202 transferred to the Commission "all money, notes, bonds, mortgages, and securities of every kind, contracts and contract rights, lands, vessels, docks, wharves, piers, and property and interests of every kind, owned by the United States" of the Shipping Board, does not make the Maritime Commission merely a "conservator" or "receiver" of such debts in the sense that the Commission had only the powers of a "receiver" in regard thereto, and consequently was required to liquidate these assets into money. Not only does the transfer of these assets not indicate that the Commission was merely to "conserve" them, but taken together with Section 204 (46 U.S.C. 1114), providing for the transfer to the Commission of all of the Shipping Board's "functions, powers and duties" these sections make it clear that by virtue of that transfer, the Commission was to continue, rather than to liquidate operations. And as we have pointed out, supra, since the Shipping Board had authority to settle claims, the Commission as its successor under Section 204 likewise had that authority.

The 1938 amendment of Section 202 does not show that the Commission lacked power to compromise debts (Appellees' Brief, p. 113). That Section was amended so as expressly to give to the Commission authority to extend and renew, in accordance with sound business practice, notes and mortgages transferred to the Commission from the Shipping Board (46 U.S.C. 1112) and was occasioned by the fact that Section 5 of the Merchant Marine Act, 1920 (41 Stat. 990-1), expressly required ships sold by the Shipping Board to be paid for in not more than 15 years. The amendment was thus necessary to remove an *express* limitation on the powers of the Commission as transferee of the Shipping Board. See S. Rep. 1618, p. 5, and H. Rep. 2168, p. 16. That

proves nothing as to the scope of the Commission's *implied* authority to accept property in compromise. Of course, no Government agency or private or public corporation has any implied power to do something expressly restrained by law. But the Merchant Marine Act contains no express statutory limitation on the power of the Commission to compromise debts.

Appellees' reference (Brief, p. 114) to various statutory provisions (46 U.S.C. 1158, 1243) giving the Commission authority to sell property under prescribed conditions and subject to prescribed limitations proves nothing. These statutes were necessary to impose Congressionally desired limitations upon the power granted.

Congress has, in the statutes cited by appellees (Appendix to Brief), granted the Commission certain substantive powers and has frequently prescribed the conditions under which they may be exercised. That certainly does not negate the Commission's implied powers, any more than the prescribing by statute or charter of the powers of a private corporation negates its implied powers.

Statutes cited by appellees (Appendix to Brief) giving the Commission power to dispose of property under certain circumstances have no relevance here. Discharging a liability by compromise is no more a disposition of Federal property; i.e., the chose in action, than would be a discharge by acceptance of payment in full. Furthermore, Congress frequently deems it advisable for a statute to spell out expressly what would be implied in law anyway, in order to eliminate doubts and contentions, however ill-founded. See the discussion above as to the 1938 amendment to Section 207 of the Merchant Marine Act, 1936; *United States* v. *Cors,* 337 U.S. 325, 331-2, so construing Section 902 of the Act

(46 U.S.C. 1242); and *Mason* v. *United States,* 260 U.S. 545, 558-9.

Provisions such as the 1938 amendment adding Section 215 to the Act (46 U.S.C. 1125), authorizing the Commission to purchase vessels with its funds do not indicate that the Commission lacked the implied power to accept property in compromise of claims. Acquisition of property as an incident to compromise is by no means the same as the Commission's expending its funds to buy such property. Thus the authority of the Secretary of the Treasury or of the Attorney General to accept property in compromise of claims within their respective jurisdictions (see 37 Op. A.G. 298) is obviously entirely unaffected by any question as to whether or not they have authority to buy property with Government funds. Furthermore, the enactment of 46 U.S.C. 1125 may be considered as necessary to *restrict* by the limitations therein stated the existing broad implied power of the Commission to purchase vessels.

The final argument advanced by the Dollars (Appellees' Brief, pp. 119-22) is that the transfer to the Commission of title to the stock in exchange for the release of R. Stanley Dollar and Dollar Steamship Line from their suretyship liabilities "could not possibly be called a compromise."

The debts which were compromised were the suretyship liabilities of R. Stanley Dollar and Dollar Steamship Line on the ship mortgage notes. This liability in the case of Mr. Dollar was $1,750,000 and in the case of Dollar Steamship Line was $3,500,000. In the event of default on the ship mortgage debts, the Government could have brought suit against Mr. Dollar and Dollar Steamship Line directly on the ship notes, without having to first foreclose the mortgages and merely obtain

deficiency judgments. 3 *Jones on Mortgages* (8th ed.), §§ 1572, 1573, pp. 7-9.[15]

Mr. Dollar and Dollar Steamship Line transferred their stock to the Commission in order to eliminate the risk that they might have to make good on their share of personal liability on the ship notes. That was a real risk at the time, for Mr. Dollar, in reporting on the Adjustment Agreement to the stockholders of Dollar Steamship Line, said: "The Maritime Commission was in a position to foreclose its various mortgages aggregating some $7,000,000 and to obtain a deficiency judgment, part of which would be collectible against this Company" (J. A. 1669). Contrary to Appellees' Brief (p. 121), we do not now and never have conceded that the mortgaged ships would bring at a foreclosure sale enough to pay off the debt without resorting to the personal liabilities on the notes.[16]

There is no showing in the District of Columbia record that the Government could have collected on the liabilities of Mr. Dollar and Dollar Steamship Line if it had sued them on the notes. The probability was that

---

[15] The California Code of Civil Procedure, § 726, may limit the mortgagee's remedy to that of foreclosure and deficiency judgment, but this is merely a procedural provision applicable to the California courts, not to a suit in a Federal Court. *Maxwell* v. *Ricks*, 294 Fed. 255 (C.A. 9). And in any event the rights and obligations of the parties under the ship notes and mortgages were determined by Federal, not State law. *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 366; *United States* v. *County of Allegheny*, 322 U.S. 174, 182-3.

[16] The only appraisal of the value of the mortgaged ships as of 1938 contained in the District of Columbia record is that of Captain Pillsbury. He gave $13,700,000 as the sum total of the values of the 13 ships if sold individually, "using prudent business methods of selling," "not on a forced sale" (J.A. 1233-5). That value, of course, had no relation to what the ships might be expected to bring at a mass foreclosure sale.

if the Government had refused to put millions of dollars of new money into the operating line and it had thus been forced into bankruptcy, the whole interrelated Dollar empire would have crashed. Hence the situation was an appropriate one from the standpoint of the Maritime Commission for compromising the suretyship liabilities.

Of course, the obligation of the operating line as principal debtor to the Government on the ship notes was not compromised. There was no reason for the operating company to object that the amount of *its* debt to the Government was not reduced by the stock transfer. It was liable for the entire $7,500,000 debt and would have been obligated to reimburse Mr. Dollar and Dollar Steamship Line for any amount which they, as its sureties, might pay on the debt. *Restatement of the Law of Security,* comment to § 135, p. 367. Hence the compromise of the liability of Mr. Dollar and Dollar Steamship Line was of no concern to the operating line one way or another.

Although some of the Dollar interests which transferred stock to the Commission were not themselves liable on the ship notes, the circumstances made it obviously sensible for them to transfer their holdings of stock in the operating line, which then had no value any way. For all of the transferors of stock (except Mortimer Fleishhacker) continued to hold substantial preferred stock interests in the operating line, either directly or through affiliated corporations, and Mr. Dollar was in a position to dictate their decisions anyway (J. A. 1609-10, 1614-7, 1618-24, 1626-30, 1715-8). Mortimer Fleishhacker was chairman of the board of directors and a stockholder of the Anglo Bank (J. A. 1327) which stood an excellent chance to lose the $1,800,000 owed it by the operating line if the Government should

refuse to finance the latter to keep it out of bankruptcy (J. A. 1853).

Accordingly, from the standpoint of all interested parties, the outright transfer of the stock for the release of Mr. Dollar and Dollar Steamship Line was a sensible compromise transaction.

Contrary to Appellees' Brief (pp. 119, 121), the District of Columbia Court of Appeals never held that the transaction *could not* be a compromise. It merely concluded (erroneously we submit) that the transaction in fact was not a compromise.

III.

The Authority of the Maritime Commission to Acquire Title to the Stock Has Been Ratified by Congress.

Even if there were any doubt that, as a matter of *a priori* statutory construction, the Maritime Commission was authorized to acquire title to the stock, any such doubt would be dissipated by the subsequent action of Congress, which confirms the Commission's construction of its statutory powers and constitutes a ratification of its action in acquiring this stock as the agent of Congress in the administration of the Merchant Marine Act of 1936.

Since 1938 Congress has repeatedly been informed and has recognized that the Maritime Commission acquired title to the stock. The 1938 annual report of the Maritime Commission to Congress discussed the situation leading up to the Adjustment Agreement of August 15, 1938, and stated (p. 11):

> On August 15, 1938, an agreement for reorganization was approved whereby the Commission acquired about 90 percent of the outstanding common stock of the Dollar Line, in consideration for releasing R. Stanley Dollar and the Dollar Steamship Company of California from their liabilities

> as endorsers or comakers on the ship mortgage notes held by the Commission.
>
> This adjustment plan was consummated in October 1938 and the Commission as majority stockholder obtained complete control in the selection of the management.

This excerpt from the 1938 annual report is set forth in the Congressional Record, with the comment by Congressman Dirksen: "Ninety percent of the stock gives the Maritime Commission control of the new line. We the people are therefore in the shipping business." 86 Cong. Rec. 4443-4.

The Commission's 1939 annual report to Congress stated (p. 10):

> In its last annual report the Commission outlined the steps taken to reestablish service on the important trade routes formerly operated by the Dollar Steamship Lines Inc. Ltd. This resulted in a plan for adjustment of the company's indebtedness being consummated in October 1938, with the Commission as majority stockholder of a successor corporation, American President Lines, Ltd.

In addition, on April 10, 1939, the Commission transmitted to Congress an elaborate printed report on the reorganization of American President Lines and the negotiations leading up to it, which contained copies of the agreement under which the stock was transferred and of the various subsidiary contracts, resolutions and legal opinions.[17] This report referred to the Commis-

---

[17] Report of the Maritime Commission to Congress, entitled "Reorganization of American President Lines, Ltd."
In addition to the regular transmittal to Congress, copies of the report were sent individually in September 1939 to all 20 members of Senate Committee on Commerce and all 23 members of the House Committee on Merchant Marine and Fisheries.

sion's determination in June, 1938, "to negotiate with the Dollar interests for the acquisition of substantially all the common stock of" the operating line (pp. 7, 8), and the Commission's conclusion that the "fundamental causes" for the line's critical position were "unsatisfactory management." The report detailed the transactions by which the Dollars drained millions of dollars from the operating line and stated that "* * * every conceivable device was adopted to drain the earnings and the working capital from the company as rapidly as possible" (pp. 12-6).

This 1939 report also pointed out that:

> Under the present adjustment plan which the Commission has already approved, the last grasp of the "controlling interests" upon the management is to be relinquished. The divorcement of these interests from any control over the affairs of the Company, which was partly effected in January of this year, will, upon consummation of the present plan, be made absolute * * * A policy of the Commission considering itself simply as a creditor and large stockholder of the company, may properly be maintained. (pp. 50, 52).[18]

This 1939 report to Congress set forth a report by the Commission's General Counsel in which he stated (pp. 60-3, 67):

---

[18] This portion of the report speaks in the future tense because it was written in September 1938, before the stock was actually transferred. This statement of the Commission's conclusions as to the Dollar management and its policy to eliminate the Dollars from the operating line had previously been transmitted by the Commission, on October 6, 1938, to all members of the Senate Committee on Commerce and of the House Committee on Merchant Marine and Fisheries.

From the very early stages of the negotiations which ultimately led to the plan for a long-term financial rehabilitation of Dollar of Delaware, it was recognized that effective voting control of the company must be obtained by the Commission. Prior to June of 1938 it was thought that such voting control might take the form of a voting trust or a pledge of the stock accompanied by rights of the Commission to vote the pledged stock. But in June 1938 it became evident that no financial guarantees from the so-called Dollar interests as required by the Commission under its resolution of June 4, 1938, would be forthcoming as a consideration for the Commission subordinating its first preferred ship mortgages in order to permit the Dollar interests to secure a working capital loan upon a first mortgage. *The Commission did not consider it appropriate in extending financial aid to maintain an essential foreign trade route, to create common stock equity values in favor of persons who were unwilling themselves to assume any financial obligations whatever.*

Consequently, pursuant to an offer of Dollar of California to transfer certain of its stock to the Commission, it *undertook negotiations for the acquisition of the beneficial interest in the stock belonging to the Dollar interests.* This contemplated the acquisition of all the class B stock of Dollar of Delaware, which stock in and of itself carried the control of the company, and as much of the class A stock as was available. * * *

* * * * * * * * *

All the stock listed [2,100,000 class B shares and 115,426 class A shares] * * * was acquired by the Commission.

* * * * * * * * *

* * * In my memorandum to the Commission dated July 20, 1938, I advised the Commission on certain fundamental legal questions involved as follows:

(a) The Commission might legally acquire the stock of Dollar of Delaware under the conditions outlined in the memorandum.

(b) Such acquisition of stock would not jeopardize the Commission's rights as mortgagee.

(c) The Commission might grant an operating differential subsidy to Dollar of Delaware *even though a substantial majority of its stock were owned by the Government.*

* * * * * * * * *

In my opinion the Commission received *valid title* to 2,100,000 shares of class B stock and to 63,380 shares of class A stock, free and clear of liens. * * * It also received as transferee *all the right, title, and interest* of R. Stanley Dollar as pledgor in 33,600 shares of class A stock * * * subject, however, to the liens of such pledges as existed on October 26, 1938. [Italics supplied.]

In addition, the 1939 report to Congress set forth opinions by the Commission's special San Francisco counsel stating: "* * * upon transfer of the certificates * * * the Commission will acquire *legal and valid title to such stock and the rights incident to such stock ownership,* free and clear of all liens and encumbrances" and that "* * * the Commission *through stock ownership* controls Dollar of Delaware" (pp. 156, 212). [Italics supplied.] The report also set forth the legal opinion rendered by counsel for the Dollars that delivery of the stock certificates "will convey to the Commission * * * valid title to the shares of

stock * * * free and clear of any liens or encumbrances whatsoever'' (p. 159).[19]

In 1939 the House Committee on Merchant Marine and Fisheries stated, in a report on a bill to amend the Merchant Marine Act of 1936 (H. Rep. 71, 76th Cong., 1st sess., pp. 6-7):

> * * * The committee is advised that the transaction whereby the Commission acquired approximately 90 percent of the stock of the American President Lines, Ltd., was negotiated. * * * *In the case of the American President Lines the Maritime Commission owns approximately 90 percent of the stock in the operating company and through a mortgage owns a large equity in the ships.* * * * [Italics supplied.]

On August 1, 1944, the Joint Committee of Congress on Reduction of Nonessential Federal Expenditures issued a comprehensive printed report on Government corporations (Sen. Doc. 227, 78th Cong., 2d sess.). This report divided ''Government corporations'' into three groups: (a) 40 ''whose activities are supervised by government agencies''; (b) 4 ''independently operated corporations''; and (c) 11 ''in which the Government may have a proprietary interest or a contractual relation'' (p. 2).

---

[19] Subsequent to the institution of the *Dollar* v. *Land* litigation the Maritime Commission's annual reports to Congress have stated that ''the Government's title to this stock is being questioned at law by R. Stanley Dollar and others.'' Maritime Commission Annual Report for 1946 (p. 35); Report for 1947 (p. 36).

Also, in 1947 counsel for the Commission told the House Appropriations Subcommittee: ''The American President Line was operated on a subsidy before the war, and the Government owns about 83 percent of the common stock.'' Hearings before a subcommittee of the House Committee on Appropriations on the Independent Offices Appropriation Bill for 1948, Part, 2, p. 678.

This Senate Document, under the heading "Corporations Created Privately or Quasi Privately and With Which the Government May Have a Proprietary Interest or a Contractual Relation," listed 11 corporations, the second of which was American President Lines, Ltd., with the following statement:

> American President Lines, Ltd.—This is a Delaware corporation created in 1929, and in 1938 the United States Maritime Commission acquired class A and class B stock in nominal value $2,666,303. This represents approximately 93 percent of the voting power and approximately 76 percent of the common stock equity, but is junior in equity to 34,189 shares of 5-percent noncumulative preferred stock with a par value of $100 per share. No cash was paid by the Commission, the *acquisition* resulting from a settlement of accounts between the Dollar Steamship Line and the Commission. Consideration is being given to the *possibility of bringing about private ownership of the lines* at an appropriate time. A special report of the United States Maritime Commission on the reorganization of the American President Lines, Ltd., was transmitted to Congress on April 10, 1939. (p. 21.)[20]

In April 1945, Admiral Land, Chairman of the Commission, and William Radner, its general counsel, testified before the House Appropriations Subcommittee on the Government's ownership of the stock as follows

---

[20] The District of Columbia Court of Appeals in its opinion on the contempt order inexplicably stated that this Senate Document did *not* list American President Lines as a corporation in which the Government has a proprietary interest. *Sawyer* v. *Dollar*, 190 F. 2d 623, 643 (C. A. D. C.). See our orginal brief, p.52, footnote 39.

(Hearings before subcommittee of the House Committee on Appropriations on the National War Agencies Appropriation Bill for 1946, p. 389):

> MR. WIGGLESWORTH. Ninety percent of the stock of this company [American President Lines] *belongs* to the Maritime Commission, does it not?
>
> ADMIRAL LAND. The Commission *owns* about 90 percent of the voting stock control.
>
> MR. TABER. How much of an interest do you have in that company? Any, really?
>
> ADMIRAL LAND. We *own* that much of the stock, sir.
>
> MR. TABER. Of voting stock; but how much, upon dissolution, would you be entitled to?
>
> MR. RADNER. About 80 percent of the assets allocable to the common stockholders' interest, after providing for the preferred stock. *About 80 percent of the common stock equity belongs to the United States.* According to the last published statement the book value of 80 percent of the indicated equity allocable to the common stock would be over $9,000,000. [Italics supplied.]

On August 1, 1945, the Senate printed a report by the Comptroller General on Government corporations, made pursuant to the Act of February 24, 1945 (59 Stat. 5, 6), which required the Comptroller General to audit and report on "all Government corporations." Reference Manual of Government Corporations—General Accounting Office—As of June 30, 1945 (Sen. Doc. 86, 79th Cong., 1st sess.). This Senate Document contained the following statement about American President Lines (pp. 1, 2):[21]

---

[21] In this connection the following statement in the Comptroller General's foreword to his report is significant: "While not all the corporations represented here are Government corporations in the

In 1938, in connection with the reorganization of Dollar Steamship Lines, Inc., Ltd., the United States Maritime Commission *acquired* 113,206 of 252,000 issued shares of the class A stock and all of the 2,100,000 shares of class B stock of the corporation. The Commission relied upon section 207, act June 29, 1936, as amended (52 Stat. 954), as authority for such action.

* * * The stock held by the Commission represents approximately 93 percent of the voting power and approximately 79 percent of the common-stock equity but is junior to 34,189 shares of 5 percent noncumulative preferred stock with a par value of $100 per share. No cash was paid by the Commission for its stock, but R. Stanley Dollar and Dollar Steamship Line (California corporation) were released from liability with respect to certain mortgage obligations of Dollar Steamship Lines Inc., Ltd., to the Commission.

On July 6, 1943, the United States Maritime Commission *announced that it was giving consideration to the possibility of bringing about private ownership of* the American President Lines, Ltd., at the appropriate time, and that parties who desired to submit comprehensive and definite proposals should place them in the hands of the Commission not later than September 15, 1943. However, information received informally from the Commission is to the effect that all bids were rejected by the Commission.

---

strictest sense of the term, all were deemed of sufficient importance, because of Government ownership, control, or financial or contractual interest, to warrant the inclusion thereof in this manual. It should be pointed out especially that the inclusion or exclusion of a particular corporation is not equivalent to a determination that it is or is not a 'Government corporation' within the meaning of the act of February 24, 1945.''

> The administrative expenses of the corporation are paid from its corporate funds, and are not subject to the control of the Bureau of the Budget or Congress.[22]
>
> No accounting is rendered by the corporation to the General Accounting Office. However, in connection with the audit of the financial transactions of the Maritime Commission, pursuant to section 207 of the Merchant Marine Act of 1936 (49 Stat. 1988, as amended; 46 U. S. C. 1117), the General Accounting Office has made an examination of the accounts and records of the corporation covering the period January 25, 1938, to December 31, 1940. [Italics supplied.][23]

In November 1945, Admiral Land, as Administrator of the War Shipping Administration, wrote a letter to the Chairman of the House Committee on Merchant Marine and Fisheries commenting on a pending bill (H. R. 3802) in which he stated:

> * * * This bill is designed to amend Public Law 41 so as to authorize the Administrator to pay to shippers sums collected by or for the account of *any corporation more than 75 percent of the outstanding stock of which is owned by the United*

---

[22] In this connection a footnote in the report stated: "This Corporation is not among those listed in S. 469 and H. R. 3660, 79th Cong., providing for financial control of Government corporations" (p. xii).

[23] The District of Columbia Court of Appeals was also in error in its statement that if Congress knew that the Commission had acquired ownership of 'the Amercian President Lines stock, Congress' failure to include that corporation in the Government Corporation Control Act (31 U. S. C. 841) would indicate "Congress intended to make one single exception to its general legislation concerning the financial control of corporations of which the United

> *States* as freight on such frustrated voyages as if the freights had been collected by the Government. Insofar as the War Shipping Administration is aware the *American President Lines is the only corporation that would be within the terms of the bill.* * * * [Italics supplied.]

And in connection with the same bill Mr. Macauley, Acting Chairman of the Maritime Commission, on March 22, 1946, wrote the Chairman of the House Committee on Merchant Marine and Fisheries as follows:

> The designed objective of H. R. 3802 is to further supplement Public Law 41, by an amendment thereto whereby freights collected on voyages within the contemplation of that act by *corporations, 75 percent of the stock of which is owned by the Government,* shall be considered as having been collected by or for the account of the Government.
>
> The American President Lines, Ltd., is a private corporation incorporated under the laws of the State of Delaware and is *the only corporation of which the Maritime Commission owns stock* within the purview of the bill. The Maritime Commission having acquired, through the reorganization of the Dollar Steamship Lines, Inc., Ltd., 72 percent of the common stock equity and

---

States is part owner." *Sawyer* v. *Dollar*, 190 F. 2d 623, 643 (C. A D. C.).

The simple fact is that Congress chose not to include in the Government Corporation Control Act not merely American President Lines but nine others of the 11 corporations "with which the Government may have a proprietary interest," as listed in Senate Document 227, pages 21-3. Congress also excluded from the coverage of that act 13 "government corporations" (in addition to American President Lines) listed in Senate Document 86, *supra.*

approximately 93 percent of the voting stock while *the balance of the stock is and has been owned by private interests.* [Italics supplied.]

House Document 689, 79th Cong., 2d sess., is an audit by the Comptroller General of the accounts of the Maritime Commission for the fiscal year ending June 30, 1944. It lists as an asset of the Commission "Miscellaneous securities . . . $2,666,030" and explains that that amount has been added to the Commission's capital as an adjustment of the book value of "certain stock turned over" to the Commission "under the reorganization plan of the Dollar Steamship Lines" to the book value as shown in American President Lines' financial statement of June 30, 1944 (pp. 7, 12).

On April 18, 1947, the Comptroller General transmitted to the House and Senate, as well as to the Chairman of the Independent Offices Subcommittee of the House Committee on Appropriations, the Comptroller General's audit of the accounts of the Maritime Commission for the fiscal year ending June 30, 1945. One of the assets of the Commission shown in this audit is "Investments (Common Stock of American President Lines, Ltd.;—113,206 Shares, Class 'A' @ $5.00; 2,100,000 Shares, Class 'B' @ $1.00) . . . $2,666,030,00."[24]

---

[24] The Comptroller General's annual audits of the Maritime Commission and the Maritime Administration for periods subsequent to the institution of *Dollar* v. *Land,* refer to the stock and set forth the then current status of the litigation. Thus, the audit for the fiscal years ending June 30, 1948 and 1949 states: "The Maritime Commission is the owner of 93 percent of the voting stock of American President Lines, Ltd. * * * No dividends have been paid on the class A or the class B stock during the time the Commission has owned the stock." This report referred to the trial court's opinion sustaining the Government's title (House Doc. 465, 81st Cong., 2d sess., pp. 59-60).

The 1950 audit referred to the Secretary of Commerce as the "holder" of the stock, pointing out that the District of Columbia

In addition, many other communications between the Maritime Commission and members of Congress since 1938 reveal that the Government's ownership of the stock has been brought to the attention of and has been recognized by members of Congress.[25]

Thus, Congress has many times been informed, and has itself recognized, that the stock was transferred by the Dollars outright, not in pledge. If Congress had any question as to the propriety of this action of the Commission, it could easily have amended Section 207 to make it clear that the Commission did not have the asserted power.[26] The facility with which corrective action could have been taken is demonstrated by the fact that between 1938, when the transfer occurred, and 1945, Congress amended the Merchant Marine Act of 1936, no less than sixteen times.[27]

Court of Appeals on July 17, 1950, reversed the trial court. The audit report stated: "Ownership of the stock will not be settled until a final determination is made by the courts" (House Doc. 93, 82d Cong., 1st sess., pp. 98-9).

[25] The appendix to this brief (pp. 58-84, below) sets forth 15 such congressional letters.

[26] Note also that Congress has left unchanged the provision in Section 9 of the Shipping Act of 1916 (39 Stat. 728, 730, 46 U. S. C. 808) which authorizes "vessels owned by any corporation in which the United States is a stockholder" to engage in the coastwise trade.

[27] Act of August 4, 1939 (53 Stat. 1182); Act of August 7, 1939 (53 Stat. 1254); Joint Resolution of May 14, 1940 (54 Stat. 216); Joint Resolution of June 11, 1940 (54 Stat. 306); Act of June 29, 1940 (54 Stat. 689); Act of October 10, 1940 (54 Stat. 1106); Act of June 23, 1941 (55 Stat. 259); Act of March 6, 1942 (56 Stat. 140); Act of March 14, 1942 (56 Stat. 171); Act of April 11, 1942 (56 Stat. 214); Joint Resolution of June 16, 1942 (56 Stat. 370); Act of March 24, 1943 (57 Stat. 45); Act of June 17, 1943 (57 Stat. 157); Act of April 24, 1944 (58 Stat. 216); Act of September 30, 1944 (58 Stat. 758); Act of December 23, 1944 (58 Stat. 920).

Congress has not only seen fit to leave Section 207 unchanged since the Commission's acquisition of the stock, notwithstanding congressional knowledge that the acquisition was one of outright title. In 1944 Congress reaffirmed the broad scope of the powers vested in the Commission by Section 207, including the power to settle claims. The Senate Committee on Commerce, in reporting on H. R. 3257, 78th Congress, which dealt, *inter alia,* with a proposed amendment to give the Maritime Commission express authority to pay and settle certain types of claims, made the following comment (Sen. Rep. No. 789, 78th Cong., 2d sess., p. 5):

> There are two other questions involving settlement of claims which were presented to your committee, but it is not believed legislation is necessary in either case. The first question relates to claims for damages to shore structures such as docks and terminals involved in collisions with vessels of the War Shipping Administration. It appears to have been a well-established precedent reaching back to the World War I period for the Government agencies entrusted with ship operations to insure commercially against damage to shore structures, irrespective of the question of possible Government immunity from suit for such damage, because of the possible liability of masters or agents for the vessels involved, or other persons whose liability would have to be indemnified by the United States. *In view of the broad powers which the Administrator exercises under section* 207 *of the Merchant Marine Act,* 1936, *and the established administrative practice in this connection, it is believed that legislation in this connection is not necessary.* [Italics supplied.]

Congress has thus plainly ratified the Commission's action in acquiring outright title to the stock. So even if any doubt existed in 1938 as to the Commission's authority to acquire title to the stock, Congress has removed any such doubt. *Brooks* v. *Dewar,* 313 U.S. 354, 361; *Isbrandtsen-Moller Co.* v. *United States,* 300 U.S. 139, 147.

IV.

Appellees' Arguments in Support of "Collateral Estoppel" Are Unsound.

Appellees' brief (p. 21) concedes that the Attorney General's defense of Land and the other commissioners in *Dollar* v. *Land* "could have had no special significance" on the collateral estoppel issue up to the decision in *Land* v. *Dollar,* 330 U.S. 731, because up to that time the question as to whether the suit was an unconsented suit against the United States was still in issue. That concession demolishes the Dollars' entire argument, for the question as to whether *Dollar* v. *Land* is an uncontested suit against the United States *is still in issue.* As stated in *Land* v. *Dollar,* 330 U.S. 731, 738-9: "If ownership of the shares is in the United States, suit to recover them would of course be a suit against the United States." The issue of ownership of the shares is still pending before the Supreme Court on our petition for reconsideration of denial of certiorari to review *Dollar* v. *Land* on the merits. *Land* v. *Dollar,* No. 353, October Term, 1950.

That is the kind of case where the question of jurisdiction depends on the decision of the merits. So the Department of Justice is still litigating the jurisdictional issue, and by the Dollars' own concession such action by the department is of no significance on the issue of collateral estoppel before this Court. These, we believe are the "special circumstances" referred to by Mr. Justice Douglas in *Georgia R. Co.* v. *Redwine,*

342 U.S. 299, 307, which prevent *Dollar* v. *Land* from concluding the United States.

Furthermore, as we show in our original brief, the Department of Justice has been and still is representing Land and Sawyer, sued *as individual tortfeasors,* to defend them from personal liability, such as the threat of imprisonment made to Secretary Sawyer by the District of Columbia Court of Appeals in its contempt order. And public policy permits the Attorney General to do that without risking the property rights of the United States on the outcome.

Although the Dollars now profess to find great difference between "res judicata" and "collateral estoppel," they themselves called their defense in the present case "res judicata" (R. 66, 76-7, 192, 194, 258; Appellees' Brief, pp. 56-7).

That our distinguishing of *United States* v. *Candelaria,* 271 U.S. 432, in our original brief (p. 26-7) was sound is shown by appellees' quotation from that case (Brief, p. 26) that the United States would be concluded "if the decree was rendered in a suit *begun and prosecuted"* by Government counsel. *Dollar* v. *Land* certainly was not "begun and prosecuted" by the Department of Justice.

The Dollars rely heavily upon a student note in the Harvard Law Review (Vol. 65, No. 3) which accepts Judge Murphy's opinion at face value. Unfortunately, the student author apparently wrote that note without the benefit of this Court's opinion of November 20, 1951. *United States* v. *Dollar,* 193 F. 2d 114 (C.A. 9).

Those authorities cited by the Dollars which we have not already disposed of in our original brief are readily distinguishable.

Lovejoy v. *Murray,* 3 Wall. 1, 18; *Bruszewski* v. *United States,* 181 F. 2d 419 (C.A. 9); *United States* v. *Ring Const. Corp.,* 96 F. Supp. 762 (D. Minn.); *Chi-*

cago, Rock Island & Pacific Ry. Co. v. *Schendel,* 270 U.S. 611, all applied collateral estoppel against *private* litigants, so no question of sovereign immunity was involved.

Gunter v. *Atlantic Coast Line Railroad Co.,* 200 U.S. 273, is specifically distinguished from *Dollar* v. *Land* by Mr. Justice Douglas in his concurring opinion in *Georgia R. Co.* v. *Redwine,* 342 U.S. 299, 307. *Richardson* v. *Fajardo Sugar Company,* 241 U.S. 44, merely held that the Treasurer of Porto Rico, having appeared in a suit, could not subsequently deny the court's jurisdiction *over him* (not the sovereign Porto Rico). In *Porto Rico* v. *Ramos,* 232 U.S. 627, the Government of Porto Rico was held bound where it had "voluntarily petitioned to be made a party, asserting rights to the property in question." The United States certainly did not petition to be made a party in *Dollar* v. *Land.* On the contrary, the District of Columbia Court of Appeals specifically held that the United States had *not* submitted itself to the court's jurisdiction. *Land* v. *Dollar,* 188 F. 2d 629, 632 (C.A. D.C.).

Contrary to appellees' assertion (Brief, p. 33), in *Minnesota* v. *United States,* 305 U.S. 382, 384, the Attorney General appeared not merely for the United States but also for "the other respondents" [Government officers], but the court nevertheless acquired no jurisdiction over the United States.

Whether the United States *could* have intervened in *Dollar* v. *Land* is beside the point. It did not do so, but rather chose to exercise its undoubted privilege to stand aloof from that action and instead try its title in the courts of this Circuit. That privilege even the District of Columbia Court of Appeals concedes. *Land* v. *Dollar,* 190 F. 2d 366, 375; *Sawyer* v. *Dollar,* 190 F. 2d 623, 645. *Dollar* v. *Land* is not, as was *United States* v. *Bank of New York & Trust Co.,* 296 U.S. 463, a case

where the property was actually in the custody of a court in an in rem proceeding. On the contrary, *Dollar* v. *Land* was an in personam action against Land, et al. as individual tortfeasors, and the District of Columbia courts made no effort to take custody of the stock.

In *United States* v. *Guaranty Trust Co.,* 76 F. 2d 747 (C.A. 2) the United States voluntarily appeared in the state court; "there was no claim that the United States appeared specially in the proceeding." The same was true in *United States* v. *Jacobs,* 100 F. Supp. 189 (N.D. Ala.). In *United States* v. *Utah,* 283 U.S. 64, the United States was plaintiff; no question of estoppel was involved anyway.

The Thekla, 266 U.S. 328, rests entirely upon doctrines peculiar to admiralty law and has no bearing on the conclusiveness of other types of proceedings against the United States, as is explained fully in *United States* v. *Shaw,* 309 U.S. 495, 502-4.

American Propellor Co. v. *United States,* 300 U.S. 475, was a suit in the Court of Claims, where Congress has consented to suit against the United States. The court merely held that the Government had failed to prove a counterclaim it pleaded.

Finally, the cases cited in appellees' brief (pp. 52-3) as to "estoppel" against the United States merely held that where the United States brings suit, its cause of action in equity is to be tested by established equitable principles. None of those cases involved any question of waiver of sovereign immunity, whether by "collateral estoppel" or otherwise.

V.

Appellees' Arguments in Support of the Appropriateness of Summary Judgment Are Unsound.

Appellees argue (Brief, p. 64) that the District of Columbia record could not have presented substantial evidence in support of our position that the stock was transferred outright, for if it did, the Court of Appeals would not have felt free to reverse, in the light of the limitations of Rule 52(a), F.R.C.P. As we show in our original brief, however (pp. 38-9), the District of Columbia Court of Appeals felt itself free to disregard Rule 52(a) entirely. *Dollar* v. *Land,* 184 F. 2d 245, 248-9. We submit that the Court of Appeals was wrong in its interpretation of Rule 52(a), but whether right or wrong, that court's opinion directly negatives the Dollars' contention that the District of Columbia record did not contain substantial evidence to support a conclusion of outright transfer.

In answer to our contention that the courts of this circuit are free to exercise their own judgment on the issue as to whether the stock was transferred in pledge or outright, appellees cite *Leishman* v. *Radio Condenser Co.,* 167 F. 2d 890 (C.A. 9). But there this Court merely held that a district court *in this circuit* was not free to reach a conclusion contrary to that of this Court deciding the same issue in an earlier case. Of course, a district court is bound to accept without question the decisions of its own court of appeals, which was all that this Court held in the *Leishman* case. The question is entirely different where, as here, the courts of this circuit are asked to accept blindly the judgment of the District of Columbia Court of Appeals.

In *General Motors Corp.* v. *Leishman,* 85 F. Supp. 187 (S.D. Cal.), the district court recognized that an earlier decision by the Court of Appeals for the Tenth Circuit on the same issue "does not operate to control

us in this action" and made an independent examination of the record and reached its own conclusion on the issue.

In *United States* v. *Weil,* 46 F. Supp. 323 (E.D. Ark.), the district court made its own examination of an issue which had been decided by the court of appeals of a different circuit and *refused* to follow the court of appeals decision.

Of the cases cited in appellee's brief at page 72, not one involved a verified pleading (such as the Government's complaint in the quiet title suit). Certainly the verified complaint has as much evidentiary value as Mr. Lasky's affidavit, which asserted what he could not possibly know to be true and which we have shown to be false (see our original brief, pp. 46-7).

The fact that the Solicitor General and other Government counsel have informed the courts that they are willing to have the Supreme Court pass on the merits of the pledge or outright transfer issue on the basis of the District of Columbia record does not by any means belie our showing here that we are prepared to make a new and better record on the trial of this action. We are so firmly convinced that the District of Columbia Court of Appeals committed manifest error in its conclusion that the stock had been merely pledged, that we are willing to place that issue before the Supreme Court on the District of Columbia record, incomplete as it is.

Foster v. *General Motors Corporation,* 191 F. 2d 907 (C.A. 7); and *Adkins* v. *E. I. Du Pont de Nemours & Co.,* 181 F. 2d 641 (C.A. 10), differed from the present case because there the complaint was unverified and, in any event, failed to state a cause of action.

Hemler v. *Union Producing Co.,* 40 F. Supp. 824 (W.D. La.), can scarcely be accepted as good authority since the district court there rendered a summary judg-

ment on the same issue which the Supreme Court in *Sartor* v. *Arkansas National Gas Corp.,* 321 U.S. 620, held should not have been decided on summary judgment.

Appellees' brief (pp. 80-7) contains a long analysis attempting to support the opinion of the District of Columbia Court of Appeals on the merits, with many references to the District of Columbia 2,000-page printed record. We do not believe that this Court will undertake an analysis of that 2,000-page record at this stage of the case, since Judge Murphy made no findings of which this Court might have the benefit. We do, however, here briefly reply to appellees' argument in order to demonstrate the manifest error of the District of Columbia Court of Appeals in its decision on the merits.

Appellees assert that that decision of the District of Columbia Court of Appeals rests on admitted facts. The contrary is the truth, for the opinion of the District of Columbia Court of Appeals is founded on its conclusion that the parties intended to transfer the stock in pledge. And, of course, we sharply deny the correctness of that conclusion.

We sharply disagree with the conclusions of the District of Columbia Court of Appeals that if this identical transaction had occurred between private parties "no court of equity would have treated the transfer of the shares as other than a pledge", and that "The equitable nature of the transaction was distinctly a pledge." 184 F. 2d 245, 253. The District of Columbia Court of Appeals reached this conclusion by wholly ignoring the decisive fact that the stock was transferred to the Commission as consideration for the release of R. Stanley Dollar and Dollar Steamship Line from their liabilities to the Government as sureties on the ship debts, as to which the operating line was the principal.

Of course, if the Maritime Commission had taken this stock from R. Stanley Dollar and Dollar Steamship Line and had *not* released *them* from their liability on the debt, equity might strain to construe the transaction as a pledge rather than an outright transfer. But for a creditor to accept consideration from a surety (whether in the form of money or property, as here) in exchange for releasing the surety entirely from his obligation, while leaving the principal liable on the debt, is a perfectly legitimate transaction, legally and equitably. *In re Kimbrough-Veasey Company,* 292 F. 757 (N.D. Ga.); *McIlhenny Co.* v. *Blum,* 68 Tex. 197, 4 S.W. 367; *Bridges* v. *Phillips,* 17 Tex. 128; *Gilstrap* v. *Smith,* 101 Ga. 120, 28 S.E. 608; *Peer* v. *Kean,* 14 Mich. 354; *Mechanics Bank* v. *Rathbone,* 26 Vt. 19; Brandt, *The Law of Suretyship and Guaranty* (1905 ed.), Sec. 172, p. 353; Pingrey, *Suretyship and Guaranty* (1901 ed.), Sec. 147, p. 107.

The District of Columbia Court of Appeals was likewise in error in its conclusion that a pledge of the stock was indicated by the fact that the Maritime Commission caused new certificates to be issued to the "United States Maritime Commission" rather than to the "United States" and that the Commission "continued to hold the certificates in its own possession without transfer to any recognized repository of property of the United States." 184 F 2d. at 254.

Since the Commission had all the general and implied powers of a private corporation (see pp. 13, 15, supra), there was no reason why it should not have had the stock certificates issued in its own name rather than in the name of the United States. The Maritime Commission was not organized as a Government corporation and was not a legal entity separate from the United States. 46 U.S.C. 1111; *United States* v. *Remund,* 330 U.S. 539. Any property interest the Commission ac-

quired would therefore necessarily be vested in the United States. It is, of course, not uncommon for Government officials and agencies to acquire property rights for the United States in the name of such officials or agencies. See the *Remund* case, *supra; In re Wilson,* 23 F. Supp. 236 (N.D. Tex.). The name used is of no legal significance; the substance of such transactions controls, and they inure to the benefit of the Government, not the official or agency. *Hodgson* v. *Dexter,* 1 Cr. 345, 363; *Remund* case, supra; *In re Wilson,* supra; *North Dakota-Montana Wheat Growers Ass'n.* v. *United States,* 66 F. 2d 573 (C.A. 8).[28]

The District of Columbia Court of Appeals advanced no reason for its conclusion that the Commission was not a "recognized repository of property of the United States" insofar as this stock is concerned. Every Government agency is the custodian of property owned by the United States (e.g., supplies and furnishings). 46 U.S.C. 1112 plainly authorized the Commission to hold "property and interests of every kind, owned by the United States."

40 U.S.C. 301, cited by appellees (Brief, p. 86) has no relevance. That statute (first enacted in 1863) must be read as qualified by the Merchant Marine Act of 1936, which vested in the Commission the powers of a private corporation in carrying out the policies of that act (46 U.S.C. 1117). 46 U.S.C. 1116, which provides for a revolving fund in the Treasury, obviously relates only to money. Corporate stock cannot be put in a revolving fund and used for expenditures.

On the question as to whether credibility of witnesses is involved, appellees' statement (Brief, p. 89,

---

[28] See also *Cherry Cotton Mills, Inc.* v. *United States,* 327 U.S. 536; *Inland Waterways Corp.* v. *Young,* 309 U.S. 517, 523-4; *Federal Crop Insurance Corp.* v. *Merrill,* 332 U.S. 383; *United States* v. *Allied Oil Corp.,* 341 U.S. 1, 5.

footnote) that "no *fact* testified to by [Mr. Dollar] has ever been questioned," is entirely erroneous. We certainly do question Mr. Dollar's testimony that he did not know until 1945 that American President Lines had paid off its debt to the Government, and we have strong evidence to show the falsity of that testimony (Appellant's orginal brief, p. 51). So credibility is involved.[29]

CONCLUSION

The Dollars, having accepted the benefits of the Adjustment Agreement, will not now be heard to challenge the authority of the Maritime Commission to acquire title to the stock under the agreement. The Commission was, however, authorized to acquire such stock in the exercise of its broad powers to settle claims under section 207 of the Merchant Marine Act of 1936. In any event Congress has ratified the Commission's action in acquiring title to the stock.

Respectfully submitted,

HOLMES BALDRIDGE
Assistant Attorney General

PHILIP H. ANGELL
Special Assistant to the Attorney General

EDWARD H. HICKEY
Attorney, Department of Justice

DONALD B. MACGUINEAS
Attorney, Department of Justice

March, 1952

[29] Appellees' statement (Brief, pp. 92-3) that "it is a stipulated fact that appellees did not know until 1945 that the debt was paid (J.A. 390, 391)," is a flagrant misstatement of the record.

APPENDIX

CORRESPONDENCE BETWEEN THE MARITIME COMMISSION AND MEMBERS OF CONGRESS REFERRING TO THE GOVERNMENT'S ACQUISITION AND OWNERSHIP OF THE AMERICAN PRESIDENT LINES STOCK

Exhibit 1

Sept. 17, 1938.

Hon. John Patrick Doherty
41 High Street
Charlestown, Mass.

Dear Mr. Doherty:

Reference is made to your letter of September 3, 1938, relative to calls of the Dollar Line vessels at Boston.

Referring to your statement that the Commission owns 90% of the stock of the Dollar Steamship Lines, Inc. Ltd., we wish to advise you that whereas an agreement was completed in August, providing contingently for the conveyance of certain voting stock to the Commission, such transfer has not been made pending the completion of various arrangements in accordance with the terms of the agreement.

Until such time as all arrangements are finally completed and in accord with the agreement it will be impossible for the Commission to advise you as to when callings may be resumed at Boston.

We sincerely appreciate your interest in the unemployment problem referred to and trust that when final arrangements are fully completed the condition may be rectified.

Sincerely yours,

(Sgd.) E. S. Land
E. S. Land
Chairman

[Italics supplied]

Exhibit 2

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

August 13, 1940

Hon. Emory S. Land,
Chairman,
United States Maritime Commission,
Washington, D. C.

Dear Admiral:

Does the Maritime Commission still hold the stock which was acquired in the course of the Dollar Line sale and reorganization and has the Commission received any offers for the purchase of this stock from private sources? If you can supply any details, it will be deeply appreciated.

Sincerely,

/s/ EVERETT M. DIRKSEN
Everett M. Dirkson MC.

Exhibit 3

August 19, 1940

The Honorable
Everett M. Dirksen
House of Representatives
Washington, D. C.

American President Lines, Ltd.

Dear Mr. Dirksen:

I refer to your letter of August 13, 1940, relating to the Commission's stockholdings in American President Lines, Ltd. None of the shares held by the Commis-

sion have been disposed of, nor is the sale of the stock by the Commission in contemplation at the present time.

Sincerely yours,

/s/ E. S. Land
E. S. Land
Chairman

Exhibit 4

UNITED STATES SENATE
COMMITTEE ON
EXPENDITURES IN THE EXECUTIVE
DEPARTMENTS

July 14, 1943

Hon. Emory S. Land, Chairman,
United States Maritime Commission,
Washington, D. C.

Dear Admiral Land:

The press recently carried an announcement that your Commission will offer, or has offered, for sale the stock of the American President Lines, now held by your Commission.

Presumably, the prospective purchasers have been furnished a prospectus of the properties and assets and liabilities of the Line.

I will appreciate your furnishing me promptly with a copy of such prospectus, and, if it is not included, the following data pertaining to the assets of the American President Lines:

(a) A detailed list of the vessels owned with the book value; the depreciated value and the estimated market value of each of the vessels; the cost of each such vessel to the American President

Lines; the date that each was built; and, if such were reconditioned when the work was done and the cost thereof. I would like the total amount of Government funds invested in each vessel, either through the provisions of the Acts of 1928 or 1936 or through loans or grants or other costs directly or indirectly absorbed either by the United States Shipping Board or the United States Maritime Commission. I would also like the value placed on each of these vessels when your Commission, in releasing the Dollar and other interests from their financial responsibilities took over the possession or control of the stock of this Company, which your Commission is now offering for sale.

(b) An itemized list of other major properties owned by this Line, and the assessed value, the appraised value, the depreciated value and the estimated market value thereof as of the most recent date when such values were placed. Also, the value placed on the Agency contract which this Line had with the War Shipping Administration; the gross and net income of the American President Lines for the years 1939, 1940, 1941, and 1942; the charter hire received by such line in each of the years 1940, 1941 and 1942, from moneys of the Maritime Commission, the War and Navy Departments or Lend-Lease Funds; and the net income for charter hire for each of the years referred to from moneys paid by the Agencies herein enumerated. Also, a detailed statement as to total Federal taxes paid in 1940, 1941 and 1942 by this Company. Also, the value of the reserve funds held by this Company, other than the amounts of such reserve funds due the Government, and the value, if any, of deposits or allowances due the Company as a result of payments made or allow-

ances made toward the purchase or construction of new vessels. Also, a statement of any amounts due this Company awaiting payment due to any differences now existing between the Commission and the Comptroller General as to the construction placed on or the interpretations of any section of the Merchant Marine Act of 1936, as amended.

(c) *The names of those persons or corporations who hold the stock of the American President Lines, not owned by any Agency of the United States Government;* and the number and estimated value of such shares held by such persons or corporations. Also, a statement as to the value of such stock at the time the Maritime Commission took possession of the American President Lines, and whether or not the holders of these minority shares were responsible for financial obligations comparable to the financial obligations of the Dollar interests at the time your Commission released the Dollar interests from such financial responsibilities.

(d) A list of the Executive Officials of the American President Lines, who, prior to their being placed on the payroll of the American President Lines, or any subsidiary thereof, were employed by, or held office in, any Governmental Agency; the salary now paid them, and the salary which they were paid in their former Governmental positions.

(e) The personnel of the Committee which your Commission has delegated to conduct these sales negotiations, and a descriptive background, the periods of employment with your Commission, or

its predecessor, the duties or responsibilities and the salaries paid to each.

I trust I may receive this information promptly.

Sincerely,
/s/ G. D. Aiken
[Italics supplied]

Exhibit 5

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

July 20, 1943

Admiral Emory S. Land
Maritime Commission
Washington, D. C.

My dear Admiral Land:

In view of the interest which I have taken in what, to me, appears to be an apparent misuse of government funds entrusted to your Commission, I have had some inquiries as to the terms or conditions of sale of the controlling 90% of the voting stock which your Commission is alleged to possess of the American President's Line.

I have been unable to ascertain whether or not any prospectus has been made public or any list of the assets and liabilities of this line, which through the sale of the stock your Commission holds, will pass from Government control to some private interest.

It is my understanding that a few years ago your Commission contemplated the sale of these properties to the owner of the controlling interest in the American Mail Line, one Mr. Reynolds. Further, I understand that at that time or previous to that time, Commissioners Moran and Wiley filed some strong dissent-

ing and opposing opinions as to the propriety of what action your Commission contemplated taking.

May I be informed as to when you plan to dispose of these securities and also may I have a list of the contemplated purchasers with whom you are negotiating and a statement from your Commission as to whether or not the public has been given an opportunity to bid on these properties. Will you please also furnish me with a list of the properties such as ships, wharves, etc., and whether or not the ships held by this line have been taken over by the Government or whether they are chartered by the Government and what is the net income per month from such charters, if they are chartered, accruing to the company.

Trusting I may be furnished with this information promptly, I remain

Yours sincerely,

/s/ Robert F. Jones
Robert F. Jones, M.C.

Exhibit 6

July 22, 1943

Honorable George D. Aiken
United States Senate
Washington 25, D. C.

Dear Senator Aiken:

I have your letter of July 14, 1943, in which you refer to a recent announcement carried in the press with respect to the American President Lines, and asking for certain information in connection therewith.

As you probably know, the American President Lines, Ltd., is the outgrowth of the Dollar Steamship Lines, Inc., Ltd., which at, or about the time of the

organization of the Maritime Commission under the Merchant Marine Act, 1936, was in serious financial difficulty, so that its services in the essential trans-pacific and around the world routes were virtually in the course of abandonment, and its ships were progressively being laid up because of inability of the Company to make current repairs.

It became necessary for the Commission, in order to carry out the purposes of the Merchant Marine Act, and in protection of the ship mortgage debt owed to it, to bring about a reorganization of the Company. Various creditors took securities in the form of debentures and preferred stock for a large part of the current debt owed by the Corporation, arrangements were made partially through the Reconstruction Finance Corporation and partly directly by the Commission, through loans secured by specific and general mortgages on the Company's vessels which permitted the rehabilitation of their fleet and the resumption of operations, and *a controlling interest (about 80%) of the common stock was taken over by the Commission.*

The management of the Company was entrusted to a Board of Directors which represented in part the old creditors and stockholders, and in part the interest of the Commission, and so far as possible, the Company has been independently managed by its Board of Directors, the Commission, however, assisting in selecting the top-side management.

Mr. Joseph F. Sheehan, who had been Executive Director of the Commission became President of the Corporation, and Mr. William G. McAdoo, who was never connected with the Commission, but who was, of course, well known to it, became Chairman of the Board of Directors. Both of these gentlemen died in office. The office of Chairman of the Board has not subsequently been filled. Mr. Henry F. Grady succeeded Mr. Shee-

han as President of the Company. Mr. Grady, as you probably know, was, prior to his selection as President of the American President Lines, Ltd., Assistant Secretary of State. The Company is presently operating under the executive direction of Dr. Grady.

The condition in which the Commission found the Company and the various corrective steps which were taken (during which the name of the Company was changed from Dollar Steamship Lines, Inc., Ltd., to American President Lines, Ltd., without changing the identity of the Corporation, but with various changes in its Certificate of Incorporation) are set forth in two booklets prepared by the Commission, one being entitled "Financial Readjustments in Dollar Steamship Lines, Inc., Ltd.", dated February 17, 1938, and the other, "Reorganization of American President Lines, Ltd.", dated April 10, 1939. These two booklets will give you, I think, comprehensively and in considerable detail much of the information which you have requested in your letter.

It is the policy of the Commission, as laid down for it by the Congress in the Merchant Marine Act, that so far as possible, the Merchant Marine shall be privately owned and operated. There have been indications recently that *it may be possible to bring about private ownership of the American President Lines at some time in the near future either through disposing of the stock of the Corporation or by some other means,* and it is with a view to determining whether or not such a step is practicable at this time that the announcement referred to in your letter was made by the Commission.

Since the announcement does not make any offer on the part of the Commission, no prospectus has been issued, but information for responsible parties who desire to formulate and present plans pursuant to the

Commission's announcement is available to such parties in the Commission's office and also in the office of the American President Lines in San Francisco. In this connection, I am enclosing for your information a memorandum which is given to any who make inquiry with respect to the availability of such information.

You ask with respect to the personnel of a Committee to which you understand that the Commission has delegated the conduct of negotiations. The only Committee that the Commission has appointed in this connection had assigned to it only the task of formulating for consideration by the Commission an advertisement for bids for the Commission's stock owned in the American President Lines. This Committee recommended an announcement of a somewhat more general character, the exact form of which as adopted by the Commission is shown by a copy thereof which I am also enclosing for your information.

I am enclosing also copies of the Annual Reports made by the Company to its stockholders for the fiscal years ended December 31, 1939, 1940, 1941, and 1942, respectively, which will give you, I think, fairly comprehensive information with respect to the operations of the Company subsequent to its reorganization.

I shall send you very shortly additional information along the lines of your request.

Sincerely yours,

/s/ E. S. Land
E. S. Land
Chairman

[Italics supplied]

[ENCLOSURE TO ABOVE LETTER]

PR 1510

UNITED STATES MARITIME COMMISSION
WASHINGTON

July 6, 1943

IMMEDIATE RELEASE

The Maritime Commission announced today that it is giving consideration to the possibility of bringing about private ownership of the American President Lines.

The announcement said: "The Commission is giving consideration to the possibility of bringing about private ownership of the American President Lines at the appropriate time. Parties who desire to submit comprehensive and definite proposals with that end in view should place the same in the hands of the Commission not later than September 15, 1943."

This announcement is in answer to a number of inquiries received by the Commission as to its policy with respect to the ownership of the company.

The American President Lines company was formerly the Dollar Steamship Lines, Inc., Ltd., well known for its trans-Pacific and Around-the-World services operated by it for many years. As a result of serious financial difficulties the Company was reorganized in 1938, largely under the direction of the Maritime Commission which took measures to insure the continuation of the services in these essential trade routes.

In the reorganization the name of the Company was changed to "American President Lines, Inc.". Some of the debts of the Company were covered by debentures and preferred stock, and the Maritime Commission, to protect its interests and insure continuation of

service, came into possession of 80 per cent of the common stock. Although the Commission had full voting control, it caused the Company to be operated by a Board of Directors which included representative local interests of San Francisco and former creditors of the concern.

In connection with the reorganization the Company incurred heavy indebtedness for working capital purposes and to put its fleet of vessels into proper operating condition. This indebtedness has since been paid off.

Dr. Henry F. Grady of San Francisco, former Assistant Secretary of State, and former Dean of the College of Commerce of the University of California, is President of the American President Lines.

Exhibit 7

July 31, 1943

The Honorable
Robert F. Jones
House of Representatives

My dear Mr. Jones:

I have your letter of July 20, 1943, in which you refer to a recent announcement carried in the press with respect to the American President Lines, and asking for certain information in connection therewith.

As you probably know, the American President Lines, Ltd., is the outgrowth of the Dollar Steamship Lines, Inc., Ltd., which at, or about the time of the organization of the Maritime Commission under the Merchant Marine Act, 1936, was in serious financial difficulty, so that its services in the essential transpacific and around the world routes were virtually in the course of abandonment, and its ships were pro-

gressively being laid up because of inability of the Company to make current repairs.

It became necessary for the Commission, in order to carry out the purposes of the Merchant Marine Act, and in protection of the ship mortgage debt owed to it, to bring about a reorganization of the Company. Various creditors took securities in the form of debentures and preferred stock for a large part of the current debt owed by the Corporation, arrangements were made partially through the Reconstruction Finance Corporation and partly directly by the Commission, through loans secured by specific and general mortgages on the Company's vessels which permitted the rehabilitation of their fleet and the resumption of operations, and a controlling interest (about 80%) of the common stock was taken over by the Commission.

The management of the Company was entrusted to a Board of Directors which represented in part the old creditors and stockholders, and in part the interest of the Commission, and so far as possible, the Company has been independently managed by its Board of Directors, the Commission, however, assisting in selecting the top-side management.

Mr. Joseph F. Sheehan, who had been Executive Director of the Commission became President of the Corporation, and Mr. William G. McAdoo, who was never connected with the Commission, but who was, of course, well known to it, became Chairman of the Board of Directors. Both of these gentlemen died in office. The office of Chairman of the Board has not subsequently been filed. Mr. Henry F. Grady succeeded Mr. Sheehan as President of the Company. Mr. Grady, as you probably know, was, prior to his selection as President of the American President Lines, Ltd., Assistant Secretary of State. The Company is presently operating under the executive direction of Dr. Grady.

It is the policy of the Commission, as laid down for it by the Congress in the Merchant Marine Act, that so far as possible, the Merchant Marine shall be privately owned and operated. There have been indications recently that *it may be possible to bring about private ownership of the American President Lines at some time in the near future either through disposing of the stock of the Corporation or by some other means,* and it is with a view to determining whether or not such a step is practicable at this time that the announcement referred to in your letter was made by the Commission.

Since the announcement does not make any offer on the part of the Commission, no prospectus has been issued, but information for responsible parties who desire to formulate and present plans pursuant to the Commission's announcement is available to such parties in the Commission's office and also in the office of the American President Lines in San Francisco. In this connection, I am enclosing for your information a memorandum which is given to any who make inquiry with respect to the availability of such information.

An announcement by the Commission, dated July 6, 1943, the exact form of which as adopted by the Commission is shown by a copy thereof which I am enclosing for your information. Pending receipt of any plans as per the announcement, no negotiations are being conducted.

The American President Lines, Ltd., as at December 31, 1942, were in possession of the following lists of properties:

Ships	Rate of bareboat charter
President Buchanan	$1,045.33 per day
President Fillmore	1,045.33 per day
President Grant	1,120.35 per day
President Tyler	1,045.33 per day
President Monroe	1,039.97 per day
President Polk	1,039.96 per day
President Johnson	1,208.27 per day

These ships were assigned to the War Shipping Administration under bareboat form of charter.

Wharves, etc:

The Lines had at Hunt's Point, New York, unimproved real estate, the book value of which was shown at $1,002,480.25. The property at Shanghai, China, consisted of a wharf and warehouse which are now in the hands of the enemy, the Japanese Empire, no value being shown on the books of the Lines as of this date.

Sincerely yours,

/s/ E. S. Land
E. S. Land
Chairman

[Italics supplied]

Exhibit 8

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

October 28, 1943

Rear Admiral Emory S. Land,
Chairman,
U. S. Maritime Commission,
Washington, D. C.

Dear Admiral Land:

The press has recently carried the announcement to the effect that the Maritime Commission has rejected all offers for the sale by the Commission of the capital stock of the American-President Lines, Inc., to private interests. I should be interested in having a look at the list of those submitting bids and the amounts bid with conditions, if any, attached to such bids. I should appreciate it if you would arrange to supply me with this information.

Sincerely yours,

/s/ R. B. Wigglesworth

Exhibit 9

January 31, 1945

Honorable Cecil R. King
House of Representatives
Washington, D. C.

Dear Congressman King:

In the absence of Admiral Land I am replying to your letter of January 29, 1945 with respect to the matter of the American President Lines.

In the summer of 1943, the Commission announced that it would give consideration to the possibility of bringing about private ownership of the American President Lines at an appropriate time, and invited interested parties to submit plans for its consideration with that end in view.

Data with respect to the Company was brought together for use by interested parties and is still available, having subsequently been appropriately augmented.

There is enclosed herewith a copy of the memorandum which advised those who made inquiry as to how they might have access to the available data, and if your constituents who are interested in the matter wish to have access to the data, either in Washington or San Francisco, they may make arrangements in accordance with this memorandum.

The reference to "September 15th" in the last paragraph of the memorandum, of course, refers to the previous announcement and may, therefore, be disregarded.

Very truly yours,

Signed: R. E. Anderson
R. E. Anderson
Director of Finance

Enclosure

Exhibit 10

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

May 21, 1945

Admiral Emory S. Land, Chairman
United States Maritime Commission
Washington, D. C.

Dear Admiral Land:

The May 3, 1945 issue of "Maritime Activity Reports" contains an article reading as follows:

> "As an initial move in clearing the decks for charting the post-war American merchant marine, the Maritime Commission was last week disclosed surveying the situation covering the American President Lines, Ltd.
>
> The American President Lines succeeded to the shipping franchises formerly held by the Dollar Steamship Lines *with the Commission still owning about seventy-five percent of the common stock of the company and voting something like 90 percent of all classes of stock.*
>
> In laying out post-war essential trade routes, the commission's staff had been confronted with the knotty problem of allocating ships to *a steamship company in which the Government owns the controlling stock* serving routes on which privately owned lines operate or could operate vessels.
>
> Furthermore, the American President Lines has before the Commission a proposed post-war operating plan calling for a fleet of thirty passenger cargo ships over four shipping routes. To carry out the proposed operations the line asked permission to charter four of the commission's P-2

design, 610-foot displacement ton combination passenger and cargo vessels, and twelve cargo ships, either the 522-foot, 14,600 deadweight ton C-4 design or the 492 foot, 12,000 deadweight ton C-3 design and to buy ten vessels of the C-3 type. With four remaining vessels of its pre-war fleet, the line would then have a fleet of thirty ships.

Prior to the war the APL maintained passenger and cargo service over two routes, the trans-Pacific and round-the-world. The line's post-war plan proposes two new routes, from United States Atlantic Coast ports via the Panama Canal to the Philippines, Hong Kong, and the Straits Settlements, and from the United States Pacific Coast ports and Hawaii to the Philippines, Dutch East Indies, Straits Settlements and India.

Operations of the APL were extremely successful and the commission had no difficulty in obtaining offers from a syndicate to purchase *the Government-owned stock in the company* but it rejected the proposals. As of June 30, 1944, the company had $2,095,291 in its capital reserve fund and $8,571,732 in its special reserve fund from operating subsidy payments. In addition the company has received settlements from losses of several ships, notably the PRESIDENT COOLIDGE on which the settlement amounted to $7,000,000.

The APL poses the question to the commission as to *whether it should dispose of the Government-owned stock in the company or lay the whole problem of the liquidation of the Government ownership before Congress for determination.* The commission's decision on which course to take is imminent."

I should appreciate being informed as to the status of this matter whether the Commission has asked or

received bids or offers to buy *the stock owned by the Government* and if so, what action has been taken or is contemplated.

I understand that the Commission has been operating this *Government-owned line* and, in effect, in competition with privately owned lines at the same time that the line has received Government subsidies. Is the Commission, in your judgment, free to dispose of this line without further authority from the Congress?

I shall be glad if you will keep me posted as to developments.

Sincerely yours,

Signed: R. WIGGLESWORTH

[Italics supplied]

Exhibit 11

May 26, 1945

Honorable Richard B. Wigglesworth
House of Representatives
Washington, D. C.

Dear Congressman Wigglesworth:

You have inquired by your letter of May 21, 1945, with respect to the matter of the American President Lines, Ltd. The Commission's stockholding in this Company, as I think you know, resulted from steps taken in 1938 and 1939, looking toward the rehabilitation of the trans-pacific and around-the-world steamship services operated by Dollar Steamship Lines, Inc., Ltd., which was then in financial difficulty. The details of the reorganization of the Company, the name of which was changed to American President Lines, Ltd. are contained in a report which I had the honor to make to the Congress of the United States under date of April 10, 1939, entitled "Reorganization of American President Lines, Ltd." Earlier steps are outlined in another volume entitled "Financial Read-

justments in Dollar Steamship Lines Inc., Ltd.," published by the Government Printing Office, 1938.

In the summer of 1943, at which time the Company had substantially rid itself of the indebtedness funded at the time of the reorganization and was in healthy financial condition, the Commission invited proposals with a view to bringing about full private ownership of the Line. Such proposals as were submitted however, as a result of this invitation, were in the opinion of the Commission either insufficient as an offering for the stock held by the Commission, or were not such as to give reasonable assurance for adequately serving the commercial needs of the American commerce on the routes covered.

The policy of the Merchant Marine Act as set forth in Section 101 thereof contemplates that our Merchant Marine shall, insofar as may be practicable, be privately owned and operated. It is believed that the Commission has ample statutory authority to carry out this policy in the case of the American President Lines, Ltd., whenever it finds it practicable to take steps to that end.

The Company is not operating in competition with other private steamship lines, as all such operations on the high seas under the United States flag are being carried out on an agency basis through the War Shipping Administration as part of the international shipping pool. With a view to avoiding such operation post-war, consideration is being given to the issuance of another invitation for proposals. If such an invitation is issued, I shall be glad to advise you thereof as you have requested.

Sincerely yours,

Signed: E. S. Land
E. S. Land
Chairman

Exhibit 12

January 31, 1946

Honorable Emanuel Celler
House of Representatives
Washington, D. C.

Dear Congressman Celler:

In accordance with the request from your office, I am sending you herewith copy of Admiral Land's affidavit in the pending litigation with respect to American President Lines. You will find in this Affidavit, beginning at the bottom of page 2, a condensed history covering the reorganization of the Dollar Lines (now American President Lines), the steps taken by the Commission to bring about private ownership of the stock held by it, and something of the background of the present litigation.

Very truly yours,

(Signed) R. E. Anderson
R. E. Anderson
Director of Finance

Exhibit 13

UNITED STATES SENATE
COMMITTEE ON
EXPENDITURES IN THE EXECUTIVE
DEPARTMENTS

August 2, 1948

Vice Admiral William W. Smith
Chairman
United States Maritime Commission
Commerce Building
Washington, D. C.

Dear Admiral Smith:

It is my understanding, from our conversation this morning, that the by-laws of the American President Lines require the annual election of the president of the corporation, so that it is not possible to give Mr. Killion such a three or five-year contract as has been suggested.

I am also assuming that what you told me constitutes an assurance on your part that there will be no move by the *Maritime Commission, representing the Government as sole stockholder,* to amend the by-laws so as to permit the making of a long-term contract with Mr. Killion without notifying the Senate Committee on Expenditures in the Executive Departments.

Sincerely yours,

/s/ G. D. Aiken
Chairman

[Italics supplied]

Exhibit 14

Washington 25, D. C.

June 22, 1949

Honorable Warren G. Magnuson
United States Senate

Dear Senator Magnuson:

You have requested Maritime Commission comment with reference to recent allegations on the Senate floor by Senator McCarran to the general effect that the Maritime Commission took over a steamship line "merely as a pledge, and declared it to be its property". The Senator's statement obviously referred to stock of Dollar Steamship Lines, Inc., Ltd. (now American President Lines, Ltd.) and a transaction which took place in 1938. The allegation that the Commission took over the line "as a pledge" is directly controverted by a recent decision of the United States District Court for the District of Columbia, as is the inference that the stock is not the property of the United States.

While the Maritime Commission is naturally hesitant in commenting upon this matter in view of the fact that it is now pending before the judicial branch of the government, attached hereto is a copy of the pertinent opinion (reported 82 Fed. Supp. 919) by Judge McGuire of the District Court of the United States for the District of Columbia dated December 2, 1948. Plaintiffs have appealed from Judge McGuire's decision to the United States Court of Appeals for the District of Columbia. Without attempting to restate this able opinion, we call attention to the following significant facts which the judge incorporated therein after lengthy trial upon a voluminous record:

Plaintiffs delivered their stock endorsed in blank to the Maritime Commission representing the United

States in 1938. Approximately five years later plaintiffs demanded that the stock be returned, claiming that it had been pledged and not transferred outright. The Commission through the Department of Justice denied that the shares were pledged, and alleged the ownership of the stock by the United States. Plaintiffs further claimed that the Commission was unauthorized by the Merchant Marine Act of 1936 or any law to take title to the stock. Judge McGuire held that the stock had been transferred outright and that the transaction was a legal one.

Pointing out among other things that plaintiffs were men of large interests and great business experience acting with the assistance of able counsel, had failed in 1938 to consummate an arrangement with the Commission which contemplated pledge of the stock, that after the deal was made and long before suit was entered Stanley Dollar referred to himself as a "former owner" of the stock and that Dollar and other plaintiffs in their 1938 tax returns treated the transaction as the surrender and transfer of all right, title and interest in stocks of Dollar Steamship Lines, Inc., Ltd., listed therein and that the Dollar interest were insistent that the Dollar name, flag, and insignia be not used by the Company after the stock-transfer, Judge McGuire held that the transfer was an outright transfer of title and in a word, that the Government owns the stock. He further pointed out that when the transfer occurred the line was at the end of its resources, and that there was serious question as to whether or not the stock then had any value, "on the one side was disaster complete and irretrievable, which meant undoubtedly not only the end of Dollar of Delaware but in all probability, if not the end then certainly damage of an irreparable character to Dollar of California and its affiliates, and to the financial stability of the per-

sonal plaintiffs. On the other, there was still hope of saving something. They decided to jettison what they could, to save themselves and Dollar of California and its associated enterprises''.

The Commission submits as wholly sound the position which it took in 1937 and 1938; that only by reorganizing the steamship line and acquiring its stock for the United States could the vital American Flag service involved be preserved with proper protection for the government interest therein. The Commission kept Congress currently advised of this transaction; the history of which is embodied in two detailed and fully documented printed reports to Congress, one (Financial Readjustments in Dollar Steamship Lines, Inc., Ltd.) made February 17, 1938 and the other (Reorganization of American President Lines, Ltd.) made April 10, 1939.

It has long been known that the Maritime Commission believes in private rather than government ownership of steamship lines, and it has always been (as it is) the intention of the Commission (unless, of course, prevented by judicial restraint as we have been) to dispose of this stock to private American interests when in the opinion of the Commission such action will be advantageous to the Government and will promote the purposes and policy of the United States, declared in the Merchant Marine Act of 1936.

The Commission trusts that this letter contains the information which you desire and will be glad to supplement it in any way that you may deem appropriate.

Sincerely yours,

/s/ Philip B. Fleming
Philip B. Fleming
Chairman

Exhibit 15

UNITED STATES SENATE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE

June 22, 1949

Philip B. Fleming
Major General
Chairman
United States Maritime Commission
Washington, D. C.

Dear General Fleming:

I am very glad to have copy of your letter to Senator Magnuson regarding the Dollar Steamship Lines. We trust we can persuade Senator McCarran to allow the Merchant Marine Act to pass without undue delay.

Cordially yours

/s/ Owen Brewster
Owen Brewster, U.S.S.

OB:dr

☆ U.S. GOVERNMENT PRINTING OFFICE 1952—992331/P.O.863